



# **Literature Review of Key Issues Relevant to OFCCP Regulations Regarding the Employment of the Handicapped**

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Final Report

U.S. Department of Labor  
Employment Standards Administration



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LITERATURE REVIEW OF KEY ISSUES RELEVANT  
TO OFCCP REGULATIONS REGARDING  
THE EMPLOYMENT OF THE HANDICAPPED

FINAL REPORT

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# 1

## INTRODUCTION

### PROJECT CHARACTERISTICS

This report summarizes the results of the final phase of a three-phase project. Phases 1 and 2 were completed during the last two years. The design of an original study about the costs of employing the handicapped (Phase 1) was completed in November 1983; a report summarizing the design was submitted to the Department of Labor on November 23, 1983. The research instruments were pretested in pilot tests with several companies in the New York City-Washington, D. C. corridor. A report on the pretest was submitted to the Department of Labor on March 30, 1984.

The final stage of the project is a review of the literature regarding employment of the handicapped. This review is intended to indicate current information about the costs and benefits of employing the handicapped and more generally about a number of specific issues related to the enforcement role of the Office of Federal Contract Compliance Programs (OFCCP). In discussions with OFCCP personnel and the Employment Standards Administration Project Officer, a number of issues important for agency policy and planning emerged. These issues are in the next chapter of the report and discussed in detail in Chapter 3.

While conducting the literature review, we were sensitive to the primary functions performed by OFCCP and how the issues and facts reported in the literature might be useful to the agency's needs. These functions include:

- Enforcement of affirmative action laws

- Contributions in writing to regulations
- Impact assessment of regulatory activities
- Distribution of information to affected groups on rights and obligations.

The research conducted for OFCCP should produce information regarding the impact of its policies on affected groups and how those policies might achieve their objectives in a more cost-effective way. In Chapter 4, we have included specific suggestions for future research projects.

## LEGAL MANDATE

In January 1974, Executive Order Number 11758 delegated authority to the Secretary of Labor to prescribe and enforce regulations implementing Section 503 of the Rehabilitation Act of 1973. In addition to Section 503, the act included handicap employment provisions under Sections 501 and 504. The law defines a handicapped person as (1) anyone with a physical or mental impairment that substantially limits one or more major life activities, (2) anyone with a record of such an impairment, (3) anyone who is regarded as having such an impairment.

In its original form, Section 501 indicated that the federal government should undertake self-study and promote affirmative action in the employment of handicapped people. Section 503 requires that federal contractors take affirmative action in their employment practices, while Section 504 prohibits discriminatory employment practices directed at otherwise qualified handicapped individuals. Section 504 applies only to federally funded programs.

## OFCCP RESPONSIBILITIES AND RESEARCH NEEDS

Under regulations, the Office of Federal Contract Compliance Programs (OFCCP) received sole responsibility for the enforcement of Section 503. Federal contractors have encountered several problematic issues concerning implementation of and applicability of Section 503 to various handicapped individuals and employers. Among these issues are precise definitions that protect handicapped persons by law, when the right to judicial review is

effective, and what constitutes reasonable accommodation. Many contractors have been unable to resolve problems arising from these issues due to the diversity of standards and court decisions and the lack of reliable labor market statistics on disability.

OFCCP needs research producing information about the impact of its policies on employers and affected groups and how those policies might be designed to achieve the agency's objectives more efficiently, accurately, and consistently. A first step in this direction is to document what relevant information exists in this area and to summarize these data sources.

## REPORT ORGANIZATION

The remaining three chapters highlight the methodology applied in this literature review effort, the nature and relationship of the key issues sought and revealed by the review, and the range of possible suggestions for future relevant research. Apparent gaps in the literature are noted where appropriate and are based on reviews of both short-term and long-term projects pertaining to OFCCP's policy and management questions.

Immediately following the discussion chapters is an index to the annotated bibliography, the annotated bibliography, and the complete bibliography. The index cross references the annotations using key words which appear at the end of each annotation. The key words indicate the primary and secondary issues discussed in the citations. The annotated bibliography itself is organized by key issue area, noting which library contains the citation and key words indicating other important subjects discussed in the citation. Each annotation includes an overview of the primary focus of the citation and a summary of the major findings or conclusions. Relevant but locally inaccessible sources are listed in the complete bibliography, along with sources cited and detailed in the annotated bibliography. Annotated sources in the complete bibliography are distinguished from non-annotated sources by page numbers in parenthesis at the left margin.



## 2

### METHODOLOGY

Applied Management Sciences met with OFCCP staff in three divisions to establish a familiarity with the implementation of policy decisions already made with respect to Section 503 and to gauge what specific types of information would be useful to develop standards or guidelines for enforcement of the rights of handicapped persons. Based on interviews with the staff, a series of researchable questions were drafted. These questions represented major policy issues of concern to OFCCP and were grouped into three broad categories: judicial decisions, implementation of regulations, and employer-employee relationships.

The research questions pinpointed 16 specific subject identifiers needed to access pertinent literature:

- |                           |                            |
|---------------------------|----------------------------|
| 1. Affirmative action     | 9. Compliance              |
| 2. Discrimination         | 10. Labor turnover         |
| 3. Employment cost        | 11. Absenteeism            |
| 4. Workers compensation   | 12. Rehabilitation Act     |
| 5. Liability              | 13. Alcoholism             |
| 6. Job performance        | 14. Drug Abuse             |
| 7. Performance appraisals | 15. Handicapped Employment |
| 8. Insurance claims       | 16. United States.         |

Singularly and in combinations, these identifiers yielded literature pertaining exclusively to handicap issues within the United States.

A format was then created for the annotated presentation of directly relevant literature. It identified the information by key issue, title, principal author, source, accession, overview, major findings, and keywords. The key issue for each annotation was linked directly to the policy issues. The accession information referred to the actual local library or other public repository where the source could be found.

Information was gathered through both a computerized and manual library literature search. Searches were also initiated within journals listed below known to contain articles and commentary on the handicapped:

- |   |   |
|---|---|
| • <u>Personnel</u>                          | • <u>Personnel Administrator</u>                      |
| • <u>Harvard Business Review</u>            | • <u>Occupational Hazards</u>                         |
| • <u>S.A.M. Advanced Management Journal</u> | • <u>Social Security Bulletin</u>                     |
| • <u>Supervisory Management</u>             | • <u>Journal of Rehabilitation</u>                    |
| • <u>Epilepsia</u>                          | • <u>International Management</u>                     |
| • <u>Rehabilitation Counseling Bulletin</u> | • <u>Journal of Applied Rehabilitation Counseling</u> |
| • <u>Ergonomics</u>                         | • <u>Inquiry</u>                                      |
| • <u>Health Services Research.</u>          |   |

Data bases searched on the DIALOG system included the following six on-line systems:

- Social SciSearch--multi-disciplinary index of every significant item from the 1,500 most important social science journals throughout the world
- National Technical Information Service (NTIS)--listing of government-sponsored research, development, and engineering analyses prepared by federal agencies and their contractors or grantees
- Smithsonian Science Information Exchange--itemization of reports about scientific research projects funded by federal, state, and local government agencies; nonprofit associations and foundations; and colleges and universities that are either in progress or have been initiated and completed between 1978-1982

- Insurance Abstracts--citations of the specialized literature of life, property, and liability insurance covering over 100 journals
- Management Contents--index of current information on a variety of business and management-related topics such as industrial relations, managerial economics, organization behavior, and public administration
- Occupational Safety and Health (NIOSH)--citations of more than 400 journal titles as well as 70,000 monographs and technical reports covering all aspects of occupational safety and health.

The BIBL file, a computerized data base that accesses books, periodicals, and serials in the Library of Congress' holdings, was used extensively, especially to access judicial commentary in the major law journals. The Congressional Research Service's reference file and catalog of U.S. government publications was also consulted.



# 3

## ANNOTATION HIGHLIGHTS

This chapter summarizes the annotated literature according to the three major policy categories regarding the rights of handicapped persons to equal employment opportunities. Individual issues within each of the three categories are discussed as they appear in Exhibit 3.1, which presents the issues as questions the literature attempts to answer. Each discussion indicates why the issue is important, what sources address the issue and to what extent, and what the probability is of concluding these issues through legislative or other available means. For the reader's convenience, the page number beginning each referenced annotation is noted in brackets at the right margin.

### JUDICIAL DECISIONS

With passage of the Rehabilitation Act of 1973, a number of policy issues evolved over the implementation of Title V provisions that obviously were not anticipated. Increasingly, the handicapped and proponents of equal employment opportunities for the handicapped are seeking clarification of handicap rights through the judicial system or at least through a discussion of these issues in the public forum. Relevant literature is discussed through nine interrelated questions that represent key issues identified by recent court cases and other source.



## EXHIBIT 3.1: ISSUES REGARDING THE HANDICAPPED

| Issue Categories   |   |   |
|--|---|---|
| A. Judicial Decisions  | B. The Implementation and Applicability of Regulations  | C. Employment-Employee Relations  |
| <p>Judicial Interpretations of Section 503 of the Rehabilitation Act of 1973</p> <ul style="list-style-type: none"> <li>• Is there an implied cause of action under Section 503?</li> <li>• What is the interpretation of the term "handicapped individual?"</li> <li>• What is the interpretation of discrimination in the context of handicapped persons?</li> <li>• What is reasonable accommodation?</li> <li>• What is undue hardship?</li> </ul> <p>Interrelationship Between Sections 503, 504, and 501</p> <p>What is the Application of Title VII to Handicap Issues?</p> <p>State Law Protections Against Employment Discrimination on the Basis of Handicap</p> <p>Implications of Case Law Involving Common Carriers for the Employment of the Handicapped in Industry</p> | <ul style="list-style-type: none"> <li>• How do "Handicapped" regulations tie in with other regulations? e.g., DSHA, workers compensation, etc.? What are the conflicts?</li> <li>• What is the linkage between affirmative action and discrimination? e.g., should employers be required to reassign the handicapped as a way of accommodating their disability?</li> <li>• How should an employer deal with the issue of hypothetical risk? e.g., what is involved with progressive disability, short-term expectations due to illness, temporary disability? What is a psychological handicap? What role has vocational rehabilitation played? What are an employer's obligations to hire former alcoholics and drug abusers?</li> <li>• How do you define a "qualified" handicapped individual?</li> <li>• Who is protected under the definition of handicapped?</li> </ul> | <ul style="list-style-type: none"> <li>• How serious a problem is alcohol and drug abuse in U.S. industry?</li> <li>• What are employers doing about alcoholism and drug abuse?</li> <li>• Is there treatment of alcoholism in the workplace? <ul style="list-style-type: none"> <li>a. Are there federal employee alcoholism programs?</li> <li>b. Do occupational alcoholism programs work in the industrial setting?</li> </ul> </li> <li>• What private avenues exist for redress prior to a complaint action?</li> <li>• How have employers interpreted their responsibility to make reasonable accommodation?</li> <li>• What types of employer actions to accommodate the handicapped have been undertaken, and what types of actions have been viewed as reasonable by courts and administrative agencies?</li> </ul> |



## IS THERE AN IMPLIED RIGHT OF ACTION UNDER SECTION 503?

Although a majority of courts have held that no private right to bring a cause of action exists under this provision of the law, several situations keep this issue alive: (a) a lack of consensus between federal judicial decisions and those emanating from the lower courts, (b) an implied right of action found under Section 504, and (c) broader provisions of some state laws providing private court action.

Two articles deal with implied right of action under Section 503:

- "Discrimination and Federal Grants: An Overview of Recent Decisions Concerning the Rehabilitation Act," Urban Lawyer, Vol. 15 (Fall 1983) [33]
- "Implied Rights of Action Under the Rehabilitation Act of 1973," Georgetown Law Journal, Vol. 68 (August 1980). [36]

Both articles present this issue in the context of case law and social policy and discuss the right to sue for enforcement and damages under both Sections 503 and 504.

For a brief analysis of the problems involved in determining the right to judicial review, see "Lowering the Barriers to Employment of the Handicapped: Affirmative Action Obligations Imposed on Federal Contractors," Dickenson Law Review, Vol. 81 (1977). Three articles deal with this issue solely in the context of congressional intent with respect to enforcement under Section 504:

- "The Rehabilitation Act of 1973: Is There an Implied Right of Action Under Section 504?" Tennessee Law Review, Vol. 49 (Spring 1982). [97]
- "Toward Equal Rights for Handicapped Individuals: Judicial Enforcement of Section 504 of the Rehabilitation Act of 1973," Ohio State Law Journal, Vol. 38 (1977) [95]
- "Litigation for the Rights of Handicapped People," De Paul Law Review, Vol. 27 (1978). [35]

Synopses of state anti-discrimination provisions are available through the following comprehensive sources:

- President's Committee on Employment of the Handicapped, The Law [55] and Disabled People: Select Federal and State Laws Affecting Employment and Certain Rights of People with Disabilities, 1980
- "State Statutes Prohibiting Discrimination in Employment," Amicus, September/October 1978
- Bureau of National Affairs, State Fair Employment Practice Laws, looseleaf update, 1984.

The first citation is perhaps the most comprehensive because it provides, in chart form, information on some of the most pertinent coverage areas. For example, state statutes offering protection are cited by state and by the extent of coverage provided under the law. The latter is presented in terms of five major areas: (1) persons protected; (2) employers, organizations, and programs covered; (3) exceptions; (4) penalties; and (5) affirmative action required. In addition, the enforcing agency or agencies within the state is cited, whether priority is given to the handicapped in government hiring or whether private court action is permitted as an enforcement of legal rights.

According to the President's Committee on Employment of the Handicapped, private court action is allowed in Colorado, District of Columbia, Florida, Illinois, Maine, Montana, New York, Oregon, Texas, Vermont, and Virginia. The 1978 citation published by the National Center for Law and the Handicapped indicates that private right of action is more extensive. In addition to those states already mentioned, the article includes the following jurisdictions: Alaska, California, Connecticut, Georgia, Hawaii, Iowa, Kansas, Kentucky, Minnesota, Michigan, Missouri, Nevada, Nebraska, New Hampshire, New Mexico, Ohio, Pennsylvania, Rhode Island, and Washington.

#### WHAT IS THE INTERPRETATION OF THE TERM, "HANDICAPPED INDIVIDUAL?"

One of the delicate issues that has arisen during the implementation of Title V concerns the definition of the protected class. There is still substantial dispute about the definition and applicability of the term "handicapped individual."

The following citation presents a comprehensive discussion of this issue:

"Who is Handicapped? Defining the Protected Class Under the Employment [66]

Provisions of Title V of the Rehabilitation Act of 1973," Review of Public Personnel Administration, Vol.2, No. 1 (Fall 1981).

The scope of disabilities and handicaps to be accommodated under the Rehabilitation Act and the Veteran's Readjustment Assistance Act, both of which are enforced by OFCCP is presented in the following article: [64]  
"Affirmative Action for the Handicapped and Veterans: Interpretive and Operational Guidelines," Labor Law Journal, Vol. 29 (February 1978).

In "Affirmative Action for the Handicapped," Personnel, Vol. 53 (May-June 1976), the authors discuss briefly the meaning of handicapped through DOL's emphasis on the 'screening in' of applicants. A review of [59]  
Section 503 complaints indicates bias charges on the basis of physical handicaps and physical appearance, certain IQ levels, and psychological traits.

Robert Duggan, in his article, "Affirmative Action for Alcoholics [1]  
and Addicts?" Employee Relations Law Journal, Vol. 5 (Autumn 1979), explains the reasons alcoholics and drug abusers are included in the protected group assuring handicapped persons equal opportunity in employment. In a similar article entitled, "Hidden Handicaps," [41]  
Wisconsin Law Review, Vol. 1983, No. 3, the author argues why alcohol-ics, drug addicts, and the mentally ill are entitled to protection under the law.

In "A Guide to the Law of Fair Employment," University of Richmond Law Review, Vol. 10 (Winter 1976), the author attempts a distillation of current fair employment law and practice covering physically handicapped, ex-prisoners, and ex-addicts.

Recent court cases have also involved litigation on behalf of individuals of short stature and persons who are obese. In a June 1983 [40]  
article in Personnel Journal, Eric Matusewitch examines the rights of obese individuals under current state and federal legislation. The author concludes that coverage is afforded under Section 503 provided

excessive weight results in or produces a record of physical or mental impairment that substantially limits a major life activity. Some major life activities of the obese may be limited by medical conditions associated with obesity such as heart disease, diabetes, and pulmonary and hepatic dysfunction.

Arno Zimmer in his guide, Employing the Handicapped, presents eight [71] categories of impairments that legally qualify a person as a handicapped employee or applicant. These categories are (1) temporary impairments that encompass fractures, pregnancy, and convalescence from disease, trauma, or surgery (including recovering from injuries resulting from carrying or moving large or heavy loads); (2) activity impairments that encompass heart, lung, or neurological diseases, forms of arthritis or rheumatism, and extremes of size and weight due to dwarfism and obesity; (3) semiambulatory mobility impairments that include persons with difficulties in walking, climbing, bending, or similar activities (e.g., impairments necessitating crutches, canes, walkers, braces, artificial limbs, or orthopedic shoes); (4) nonambulatory mobility impairments; (5) visual impairments; (6) hearing impairments; (7) aging impairments; and (8) manual impairments that result in either partial or total loss of manual dexterity in one or both hands.

Discussion of this issue has already led to some amendments of the law. For example, the Rehabilitation Act was amended in 1978 specifically to exclude alcoholics and drug addicts from Title V protection when such characteristics affect safety or constitute a threat to property.

#### WHAT IS THE INTERPRETATION OF DISCRIMINATION IN THE CONTEXT OF HANDICAPPED PERSONS?

The literature discusses this issue in terms of implementation; that is, what will be required to distinguish between discriminatory and justifiable employment rejections as a result of a handicapping condition?

An excellent article, which suggests the use of specific standards, contained in DePaul Law Review, Vol. 27 (1978). The article is [57] titled "Protecting the Handicapped from Employment Discrimination:

The Job Relatedness and Bona Fide Occupational Qualification Doctrines." The author discusses some recent court cases to indicate how the courts have approached the issues of job-relatedness and BFOQ. The author points out that essentially the courts have taken a common sense--or lack of common sense--approach. The reasons for exclusion of a particular handicapped person have been considered and if deemed reasonable, fair, or legitimate have been upheld or if not, invalidated. The point is made that although there are merits to this simplified approach, perhaps a set of standards such as those under Title VII would be instructive in formulating general principles in the handicap area.

The "how-to" literature is directed to employers and managers and discusses this issue, for example, in terms of the interface between job requirements and medical standards for hiring employees to avoid bias charges.

#### WHAT IS REASONABLE ACCOMMODATION? WHAT IS UNDUE HARDSHIP?

One aspect of equal employment opportunity requirements is that devoted to identifying the beneficiaries of Section 503 and the impact of employers' duty to undertake reasonable accommodation. More and more this means the integration of handicapped persons into the entire personnel system, thus providing them the same opportunities others have in personnel activities, e.g., hiring, promotion, transfer, and job training.

In light of recent cases that have determined such violations of employees rights as arbitrary job removal and reassignment and as blanket exclusions on the basis of handicap, the issue has become the job relatedness of the employment criteria used and the nature of the accommodations the employer must undertake. This interrelationship is discussed in, "Protecting the Handicapped from Employment Discrimination [44] in Private Sector Employment: A Critical Analysis of Section 503 of the Rehabilitation Act of 1973," Tulane Law Review, Vol. 54 (April 1980).

Similarly, the author of "Accommodating the Handicapped: The [100] Meaning of Discrimination Under Section 504," in the New York University Law Review, 1980, articulates an expanded view of the meaning of

discrimination and proposes a standard for distinguishing between justifiable refusal to accommodate and discriminatory behavior. This standard requires accommodation directed toward ensuring that the handicapped only face burdens in receiving the benefits of federally funded programs equal to those burdens confronted by the non-handicapped.

There are no definitive answers to what constitutes "reasonable accommodation" or "undue hardship." Federal courts are still grappling with these issues. Recent rulings suggest, however, that courts expect employers to look for every possible way to make an accommodation before claiming undue hardship and before rejecting a handicapped applicant or employee. (See Smith v. Administrator of Veteran Affairs, U.S. District Court of California.)

The "how to" literature offers suggestions and recommendations to employers on adapting tools and the job to the handicapped worker. Employers are urged to modify written examinations and worksites; adjust work schedules; restructure jobs; provide assistive devices, readers, and interpreters; adopt flexible leave policies; reassign and retrain employees; and eliminate transportation barriers. An excellent guide to employer obligations is contained in Arno Zimmer's Employing the Handicapped. [71]

Other studies demonstrate the feasibility of accommodation utilizing a variety of technologies. A report sponsored by the National Science Foundation in 1978, for example, discusses the use of existing computer technology to employ the physically handicapped while they remain in their homes. The Employment and Training Administration of the U.S. Department of Labor reports on a survey of handicapped and non-handicapped employees and supervisors in a corporate environment. Their findings overwhelmingly support theories that claim flexible work hours increase worker satisfaction for non-handicapped and, to a greater extent, for handicapped workers. A 1982 study for the U.S. Department of Energy examines the physical and mental requirements for various jobs for persons having physical limitations or restrictions. The study [78] [87]

recommends the approximate range in which an organization can accommodate these employees without jeopardizing the health and/or safety of workers.

#### THE INTERRELATIONSHIP BETWEEN SECTIONS 503, 504, and 501

One of the major contributions to handicap rights for equal employment opportunities contained in the Rehabilitation Act of 1973 is embodied in Sections 503, 504, and 501. In seeking effective enforcement of the Rehabilitation Act, proponents of civil rights are evaluating the interrelationship between these sections of law to determine their respective strengths and limitations and to recommend guidelines for revisions where the strengths of one section might improve the weaknesses of another.

The issue of who is the protected class is discussed separately for Sections 503, 504, and 501 in a 1981 article contained in Review of Public Personnel Administration. [66] The author demonstrates how the three employment provisions of Title V fit on a continuum, with the broadest protection for the narrowest class (Section 501) on the one side and the most limited protection for the broadest class (Section 504) on the other.

The author of a 1978 article in the Boston University Law Review [37] provides a comprehensive comparison of administrative history, coverage prerequisites, legal obligations, enforcement procedures and remedies under Sections 503 and 504, as well as a discussion of current issues under Section 503. The author concludes with the recommendation that administration of both Sections 503 and 504 would be improved by a consolidated program enforced by a single agency. The author also proposes formulating a new statutory framework that would impose upon all recipients of federal benefits a uniform duty to take affirmative action to eliminate discrimination against the handicapped. By so doing, the author argues, Congress would facilitate the full effectuation of Sections 503 and 504 policies.

## WHAT IS THE APPLICATION OF TITLE VII TO HANDICAP ISSUES?

As court decisions and administrative interpretations of personnel practices affecting the handicap continue to proliferate, the impact of civil rights legislation and its applicability to handicap rights is being examined, albeit indirectly. Handicapping conditions are admittedly different from those of other groups who command protection from employment discrimination. Nevertheless, probably the most appropriate application of legal principles are those found in Title VII of the Civil Rights Act of 1964. (There have been numerous congressional attempts to amend the Civil Rights Act to include handicapped individuals.)

The following articles discuss the impact of civil rights legislation on employment practices for minorities:

- "Equal Employment Opportunity and Its Implications for Personnel Practices," Labor Law Journal, May 1976 [50]
- "The Discrimination Danger in Performance Appraisal," The Conference Board Record, March 1976 [53]
- "Protecting the Handicapped from Employment Discrimination: The Job-Relatedness and Bona Fide Occupational Qualification Doctrines," DePaul Law Review, Vol. 27 (1978) [51]
- "Employee Insurance Benefit Plans and Discrimination on the Basis of Handicap," DePaul Law Review, Vol. 27 (1978). [17]

### STATE LAW PROTECTIONS AGAINST EMPLOYMENT DISCRIMINATION ON THE BASIS OF HANDICAP

Similar to federal anti-discrimination statutes, state laws differ by type and extent of coverage provided to the handicapped. Efforts continue to expand these rights as state court cases increase. Efforts are directed toward both expanding states' rights and achieving compliance with existing federal law.

For a general list of the treatment of the handicapped under state law, consult "A History of Unequal Treatment: The Qualifications of Handicapped Persons as a Suspect Class Under the Equal Protection Clause," Vol. 15, Santa Clara Law Review, 1975.

The U.S. Office of Personnel Management, Office of Intergovernment Personnel Programs, has sponsored, for example, many studies and grants for states for programs for the handicapped:

- Training on how to implement the compliance requirements of the Rehabilitation Act of 1973 [68]
- Removal of barriers to deaf and hearing-impaired applicants by making reasonable accommodation in test format
- Analysis of mental and physical job requirements [63]
- Employment training programs for the disabled.

#### IMPLICATIONS OF CASE LAW INVOLVING COMMON CARRIERS FOR THE EMPLOYMENT OF THE HANDICAPPED IN INDUSTRY

Despite the provisions of law requiring reasonable accommodation, most courts and arbitrators have agreed with management that safety comes first. In situations where an employee is a risk to himself or to other employees, an employer has a duty to deny employment. The point, however, at which an employee or job applicant is a risk is not always clear.

In Soo Line Rail Road Company v. DILHR (Wis. Cir. Ct., 1977), the court found that removal of a locomotive engineer from his job because of a heart condition constituted discrimination. In Clark v. Chicago Milwaukee, St. Paul and Pacific Railroad Co., an applicant for a brakeman's position was refused

## REGULATIONS

Section 503 regulations guide implementation of the statutory provisions. Yet many questions have been raised about proper application of the law to employment situations concerning the handicapped, which suggests that methods are still needed to determine whether a particular job applicant or employee has coverage within the scope of the act.

HOW DO 'HANDICAPPED' REGULATIONS TIE IN WITH OTHER REGULATIONS SUCH AS OSHA, WORKERS' COMPENSATION, ETC.? WHAT ARE THE CONFLICTS?

Often, laws benefit the same groups of disadvantaged individuals even though provisions do conflict. For example, under the Social Security Disability Insurance Act, handicapped persons are paid a monthly stipend as long as they are unemployed. Once they return to full employment, the stipend is discontinued. Handicapped individuals hired at the minimum wage lose benefits and immediately begin paying taxes. This situation acts as a disincentive to individuals seeking employment at low wages.

Conflicting regulations also arise regarding handicapped employees or applicants and the safety risk involved in light of Occupational Safety and Health Administration standards. Some argue that the handicapped possess compensating factors that give them a sensory or physical ability greater than average and thus make them more safety conscious than other employees (Safety Standards, Vol. 11, No. 6, December 1962). [83]

Arguments about the occupational risks associated with disabilities vary depending upon the handicapping condition. It has been found through experimental results that motion patterns and subjective mood of individuals in industrial work situations change drastically for several hours after blood alcohol levels have returned to zero and the individual is legally sober. Such observed and measurable changes make it advisable to conduct further research into the after effects of alcohol and common medications and their influence on worker performance and occupational safety (Journal of Safety Research, September 1975, Vol. 7, No. 3). [89]

Safety, affirmative action, and anti-discrimination legislation have expanded the role of the industrial engineer. Engineering aspects include accessibility of the plant and facilities, safety, insurance, job modification, and emergency evacuation (Proceedings of the American Institute of Industrial Engineers, 1982 Conference) [79]

WHAT IS THE LINKAGE BETWEEN AFFIRMATIVE ACTION AND DISCRIMINATION? E.G., SHOULD EMPLOYERS BE REQUIRED TO REASSIGN THE HANDICAPPED AS A WAY OF ACCOMMODATING THEIR DISABILITY?

What actually constitutes "reasonable accommodation" has not yet been settled definitively by the courts. The literature indicates that employers are far more willing to extend accommodation to employees with seniority who have proven themselves competent over the years than with new employees or job applicants.

In several arbitration decisions involving alcoholics, drug abusers, or persons suffering from mental illness, the grievant was reassigned to a less stressful job until counseling and rehabilitation indicated that the employee was capable of resuming old job duties. This, however, is not always the case. Particularly during periods of company reorganization (i.e., layoffs), persons with disabilities are likely to suffer from arbitrary job removals and or reassignments that, in fact, worsen their situation. For example, in a 1984 case involving Schumberger Well Services, the Human Rights Commission of New Mexico ordered the oil company to rehire an engineer layed off because of multiple sclerosis. The commission found that the engineer had greater seniority and higher performance ratings than other engineers. In Folz v. Marriott Hotel Corporation, the U.S. District Court of Missouri awarded cash to a manager who was falsely terminated for poor performance when the real reason was his handicap.

The issue of accommodation is discussed at greater length in the section on employer-employee relations.

HOW SHOULD AN EMPLOYER DEAL WITH THE ISSUE OF HYPOTHETICAL RISK? E.G., WHAT IS INVOLVED WITH PROGRESSIVE DISABILITY, SHORT-TERM EXPECTATIONS DUE TO ILLNESS, TEMPORARY DISABILITY? WHAT IS A PSYCHOLOGICAL HANDICAP? WHAT ROLE HAS VOCATIONAL REHABILITATION PLAYED? WHAT ARE AN EMPLOYER'S OBLIGATIONS TO HIRE FORMER ALCOHOLICS AND DRUG ABUSERS?

As perceived by most employers, handicaps are conditions that produce a permanent and irreversible impairment, e.g., deafness, blindness, paralysis. Yet many debilitating and progressive conditions exist which can be controlled or placed in remission with continued treatment and/or rehabilitation (e.g., alcoholism, cancer, multiple sclerosis). These "hidden handicaps" have added to the controversy of mainstreaming the handicapped into society. Examples of how employers are dealing with this issue are presented below in a discussion of recent judicial decisions and arbitral remedies.

In cases of dismissal on the determination of a safety risk, cases brought before arbitration show that management's decision to dismiss must rest on something more than a mere presumption of danger. Termination or discharge is rarely acceptable in view of the alternatives available: sick leave, leave of absence, transfer, etc. In a 1976 arbitration involving Commonwealth Gas Company [76-2 ARB para. 8494 at 6611-12 (Fallon, 1976)], an employee whose schizophrenia was in remission was [11] reinstated under the following conditions:

- That he visit his doctor once a week for 6 months
- That his medication not exceed 400 milligrams per day
- That the company place him in a job with less potential stress if it chose to do so.

In cases of drug-related misconduct on company premises, four factors are cited most often by arbitrators: (1) applicable plant rules, their availability to employees, and the company's previous history of enforcement; (2) the employee's past work and disciplinary record; (3) adverse effects on the company; and (4) severity of the offense.

Not infrequently, management will attempt to save employees by both enabling them to enter rehabilitation programs and by restructuring their jobs to accommodate their special circumstances. For example, a [14] warehouse employee was granted two leaves of absence to enter a hospital for treatment. Upon release, the firm agreed to assign him to a lighter job until he was able to perform his regular duties. (See 60 LA 1335, P.N. Hirsh and Co. and International Longshoreman's Association, Local 1642.) In Sterling Drug Inc. and International Chemical Workers Union, Local 342 (see 67 LA 1296), the company attempted to accommodate an alcoholic employee by encouraging him to enter a rehabilitation program and by altering both his job classification and work shift so he could attend meetings of Alcoholics Anonymous.

Arno Zimmer cites several recent state judicial decisions involving [71] hypothetical risk. In Dairy Equipment Company v. DILHR (Wis. Cir. Ct., 1977),

the employee was terminated because he had only one kidney. The circuit court held that a handicap may be a condition which creates a perceived sensitivity to injury in the future as well as a condition which may in the future cause difficulties in job performance. Thus, the definition of handicap under the Wisconsin Fair Employment Act clearly includes the absence of one kidney. The court also held that the Safe Place Statute in Wisconsin did not relieve the employer of an obligation not to discriminate against qualified handicapped persons since there had been no showing of reasonable probability that working conditions would be hazardous to the employees health.

Similar cases tried in the Wisconsin Circuit Court include, Western Weighting and Inspection Bureau v. DILHR, Chrysler Outboard Corporation v. DILHR, and Fraser Shipyards, Inc. v. DILHR.

#### HOW DO YOU DEFINE 'QUALIFIED' HANDICAPPED INDIVIDUAL?

In all cases of employment discrimination concerning race and many cases concerning sex, there is no correlation between the characteristics and a person's ability to perform a job. Within the class of handicapped individuals, the characterizing handicap is unique to each member of the group and can be significant when determining whether that person is indeed a qualified individual entitled to protection from employment discrimination under the Rehabilitation Act.

U.S. Department of Labor regulations apparently apply Title VII jurisprudence in their interpretation of the non-discrimination obligation. Where the imposition of mental or physical job qualification requirements screens out otherwise qualified handicapped employees or applicants, the burden is on the contractor to show that the requirements are related to the specific jobs for which the handicapped worker is being considered and are consistent with business necessity, reasonable cost, and safe performance of the job.

With the advent to Title VII of the Civil Rights Act of 1964, Executive Order 11246, the Equal Pay Act, etc., employers had to substantially rethink and modify their traditional practices. Any selection instrument used as a screening device for employment opportunity, not just selection, may be viewed as an employee selection procedure. If it has an adverse impact on employment opportunities of any protected group, its use may need to be justified as a matter of following certain guidelines. These are the EEOC's "Guidelines on Employee Selection Procedures" and OFCC's "Order on Employee Testing and Other Selection Procedures" (The Conference Board Record, [53] March 1976).

Issues concerning the nature and administration of appraisal programs have been raised and decided in several court cases.<sup>1/</sup> At a minimum,

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<sup>1/</sup>Albermarle Paper Company v. Moody, U.S. Supreme Court, focused on two issues: subjective supervisory rankings and lack of job analysis. When plaintiff's test scores were compared against supervisory rankings in a validation study, it was found that employees had been ranked against a vague standard, open to each supervisory's own interpretation. In addition, employees were rated against one another, sometimes against people not performing the same job. In the process of validating the tests, Albermarle Paper Company made no attempt to analyze the jobs to delineate the particular job skills needed to perform the position. This point is also discussed in the case of Rogers v. International Paper. In discussing the potential for discriminatory practices, the court stated that the resulting absence of proper and careful job analyses was fatal to the validation study. In Wade v. Mississippi Cooperative Extension Service, the U.S. District Court found that the evaluation instrument was not based upon job analysis and that no data were presented to show that the evaluation instrument was a valid predictor of employee job performance. Other cases include Rowe v. General Motors Corporation, Baxter v. Savannah Sugar Refining Corporation, Brito v. Zia Company, Harper v. Mayor and City Council of Baltimore.

companies must to check the appraisal programs and their applications for disparate effects on any group protected by law. Companies may also need to establish that their appraisal systems have been carefully developed, are even-handedly administered, and are valid measures of job performance. Recent research indicates that most firms are not yet in a position to justify their system(s) in these terms.

#### WHO IS PROTECTED UNDER THE DEFINITION OF 'HANDICAPPED'?

The three-part Section 503 definition recognizes that distinctions between perceived and real handicaps are often artificial and formal. Likewise, the definition does not address the origin or the duration of the handicapping impairment. This fact raises additional questions about involuntary impairments, temporary disability, disabilities that are non-medical or self-inflicted, or "perceived" handicaps.

These questions primarily affect individuals with so-called "hidden" handicaps." The literature references the employability of cancer and cardiac patients; much more data are available about the employment of alcoholics and drug abusers. The literature also contains the results of social surveys that document employer attitudes toward different handicapping conditions and the effects of these attitudes on the employability of affected individuals.

Research has been conducted regarding the work-related costs of alcohol abuse and the market sector. A methodology for estimating the economic impact of chronic health disabilities is presented in Carl Schramm's [2] Alcoholism and its Treatment in Industry. This text also presents the results of an evaluation of the Baltimore Employee Health Program comparing alcoholics' social stability, work behavior, and job satisfaction with those of non-problem drinking employees.

Industrial programs for alcoholics so far are voluntary programs. Whether the employer must provide rehabilitative treatment under existing laws has not been settled by the courts. Case studies of programs in giant corporations are documented in the literature; Occupational Alcoholism Programs by Richard L. Williams is an example. [9]

Volume 29 of the Labor Law Journal (1978 edition) contains [64] interpretive and operational guidelines for Section 503. The author Diane Jackson is a personnel director for a large corporation. Her article includes a discussion of unlawful employment practices toward the handicapped or perceived handicapped. For example, an applicant or employee cannot be denied employment even though the condition may involve future payroll risk.<sup>2/</sup> An alcoholic or drug abuser need not be rehabilitated to qualify for protection under the law. The author suggests that all medical documentation of physical and mental handicap be based on the American Medical Association's Guidelines to the Evaluation of Permanent Impairments.

#### EMPLOYER-EMPLOYEE RELATIONS

The range of personnel practices affected by handicap rights imposes judgmental obligations upon employers to familiarize themselves with the provisions of the law and the implementation regulations. A review of the literature also indicates a need to disseminate more up-to-date information to all affected parties.

#### HOW SERIOUS A PROBLEM IS ALCOHOL AND DRUG ABUSE IN U.S. INDUSTRY?

The National Council on Alcoholism established that 6.5 million employees are alcoholics and that the resulting loss of productivity amounts to \$10 billion annually. The medical costs of treating the effects of drug abuse in the United States, according to Blue Cross and Blue Shield, is more than \$500 million a year.<sup>3/</sup>

These statistics and data maintained by the National Institute on Alcohol Abuse and Alcoholism would indicate that the problem is a serious one and that employees at all job levels are affected. The problem of alcoholism has been

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<sup>2/</sup>In the case of Baltimore and Ohio Railroad Company v. Bowen, the Maryland Court of Special Appeals ruled that an employer has the burden of proving a reasonable probability of future injury before rejecting a handicapped applicant. The possibility of future injury does not constitute sufficient proof.

<sup>3/</sup>Tia Denenberg, "The Arbitration of Alcohol and Drug Abuse Cases," The Arbitration Journal, December 1980, p. 16.

documented since the 1960s, long before the enactment of handicap anti-discrimination law. The dearth of literature in this area attests to the persisting difficulty in dealing with and controlling this form of abuse.

Harrison Trice in Spirits and Demons at Work discusses the impact of [5] abuse on specific job behaviors, examining the relationship between dependency and (a) work efficiency, (b) turnover, (c) cover-up, (d) absenteeism, and (e) accidents. Work-based costs of problem drinking and drug abuse are also discussed in terms of the impact of the drinker on other employees and the costs of "doing something" about the drinker once the limits of tolerance are reached. Studies that systematically and comprehensively attempt to compute the dollar costs of dependency are cited in the Trice text.

In his book, Alcoholism and Its Treatment in Industry, Carl Schramm [2] estimates the work-related costs of alcohol abuse to both problem drinking workers and the market sector to be on the order of \$10 billion, based on work by Berry and Boland. Schramm also discusses methodology used to estimate the economic impact of chronic health disabilities that are illusory and difficult to measure, as well as epidemiologic data and its applicability to economic analysis of this type.

#### WHAT ARE EMPLOYERS DOING ABOUT ALCOHOL AND DRUG ABUSE?

Recent employer-employee contracts are not any more likely to provide for rehabilitation than were contracts negotiated 20 years ago. On most occasions, employer disciplinary action stems from management's contractual right to discipline employees for just cause. When contract terms or company employment rules deal with alcohol and drugs, it is almost exclusively in the context of specifying prohibited behavior and listing disciplinary actions for violations of employment terms, not as an alternative disciplinary action. <sup>4/</sup>

If employees are impaired by alcohol, drug addition, or mental illness, are they able to understand or to control their actions? Should they, therefore, be subject to discipline and discharge? Does the employer have a

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<sup>4/</sup>Michael Marmo, "Arbitrators View Alcoholic Employees," The Arbitration Journal, March 1982, p. 18.

responsibility to rehabilitate? These issues have been raised in a number of articles dealing with both judicial and arbitral remedies:

- "Arbitration and Mental Illness: The Issues, the Rationale, and the Remedies," The Arbitration Journal, September 1980 [11]
- The Developing Notion of Employer Responsibility for the Alcoholic, Drug Addicted, or Mentally Ill Employee," St. John's Law Review, Vol. 53, 1979 [15]
- "The Arbitration of Alcohol and Drug Abuse Cases," The Arbitration Journal, Vol. 35, December 1980. [13]

Trice describes typical reactions to alcohol abuse in work organizations and presents some of the basic barriers to intervention that are built into the supervisor's role as well as the supervisor-subordinate relationship.

#### IS THERE TREATMENT OF ALCOHOLISM IN THE WORKPLACE?

The literature indicates the existence of a formal alcoholism policy in some 71 federal civil service installations as well as in some of the giant corporations. Industrial treatment programs have most often been fashioned around the premise that a unitary approach to identification and referral in any given employment should be equally effective in delivering treatment to all workers. Yet the conclusion is that little scientific knowledge is available to guide policymakers and individuals with responsibility for setting up and administering industrial treatment programs.

Carl Schramm's text, Alcoholism and Its Treatment in Industry, [2] concludes that different means for implementing alcoholism policies are necessary for employees in high-status occupations and suggests some ways in which implementation could be improved for lower-skill level workers. Williams and Moffat in Occupational Alcoholism Programs present insights [9] into the problems and complexities of management control of alcoholism by describing programs now functioning in some of the giant U.S. corporations.

The generic term applied to treatments available in the workplace is Employee Assistance Programs (EAPs). These programs attempt to control, by a variety of methods, alcoholism, drug abuse, and certain mental

health problems that adversely affect job performance. Shain and Groeneveld discuss employee assistance programs and how they typically [4] involve both rehabilitative and disciplinary components.

#### WHAT PRIVATE AVENUES EXIST FOR REDRESS PRIOR TO A COMPLAINT ACTION?

Labor law has traditionally upheld the existence of avenues to investigate and to resolve employee work-related complaints. As courts work to define employer obligations to equal employment opportunity, many companies and unions are working toward renegotiating their collective bargaining contracts and employment relationships with an increased emphasis upon voluntary compliance.

One form of grievance representation before an internal hearing is an arbitration procedure. Two articles explain how this process might work in employment discrimination cases. They are contained in the Labor Law Journal, Vol. 27, 1976:

- "Equal Employment Opportunity and its Implications for Personnel Practices" [50]
- "Title Seven Arbitration in Action." [10]

It should be noted that cases do not reach arbitration unless the grievants think employer's did not deal with their problems in an acceptable manner. This is not meant to imply, however, that in all cases, employers are insensitive to employees' special problems or that employers are not unwilling to accommodate.

#### HOW HAVE EMPLOYERS INTERPRETED THEIR RESPONSIBILITY TO MAKE REASONABLE ACCOMMODATION?

According to the law, employers are allowed to exclude from employment any individual, including a handicapped person, who is unable to efficiently perform, at the standards set by the employer, the duties required in the job. At the same time, the law (specifically Section 503 of the Rehabilitation Act) requires federal contractors to take affirmative action for employment of the handicapped including "reasonable accommodation" to the physical and mental limitations of an employee or applicant. Opinions range widely on resolution of these two seemingly conflicting provisions of the law. The courts have yet to provide definitive answers.

While the employer has a right to discharge or refuse to hire anyone who is not performing a job satisfactorily, the employer presumably cannot do so if the employee would be able to perform with some accommodation by the employer. Accommodations are generally viewed as structural modifications providing access to the place of employment and/or adaptation of the tools of employment in the work area, including work schedules. Businesses tend to be reluctant to make adjustments when they are likely to have an adverse economic impact. The latter is traditionally referred to as undue hardship. In a recent Small Business Administration study, the authors attempted to [23] examine the costs of compliance with Section 503 on the economic structure of small businesses and on employment opportunities for the handicapped.

In his 1980 article in the Tulane Law Review, Kevin O'Dea discusses [44] the issue of accommodation by identifying the beneficiaries of the Rehabilitation Act. Thus, the threshold question becomes (1) whether the individual is handicapped and (2) whether that handicapped individual is qualified for the employment at issue.

The legal rights of the handicapped with regard to reasonable accommodation are further presented in Burgdorf's text where specific [49] court decisions are discussed. The author presents cases where a violation of employees rights were found through arbitrary job removal and reassignment. Jane Nold in the Wisconsin Law Review (1983) offers [41] suggestions for the employer on how to satisfy the reasonable accommodation standard of the law.

WHAT TYPES OF EMPLOYER ACTIONS TO ACCOMMODATE THE HANDICAPPED HAVE BEEN UNDERTAKEN, AND WHAT TYPES OF ACTIONS HAVE BEEN VIEWED AS REASONABLE BY COURTS AND ADMINISTRATIVE AGENCIES?

Reasonable accommodation has not been clearly defined by either judicial decisions or by administrative hearings. At a minimum, it may include:

- Making facilities readily accessible to and usable by handicapped persons
- Job restructuring, part-time or modified work schedules  
quisition or modification of equipment or devices

- Appropriate adjustment or modification of examinations
- Provision of readers and interpreters
- Reassigning and retraining employees.

More recently, this issue has been strictly interpreted by the courts. In Smith v. Administrator of Veteran Affairs (1983), the U.S. District Court of California ruled that the dismissal of an epileptic was unlawful. The hospital had rejected reinstatement of an epileptic employee on the grounds that his condition could create a danger both to himself and to patients. The court found that the agency based its refusal to reinstate the employee on unreasonable fear of what might happen if epileptics were employed. The court found that the employee was entitled to "reasonable accommodation" that included making sure the employee took medication. Rulings such as these suggest that courts expect employers to look for every possibility to make an accommodation before claiming undue hardship and before turning down a handicapped applicant or employee.

Issues of most concern to employers are excessive absenteeism, safety, and the ability to perform. Many cases before the courts and arbitrators involve the prevailing viewpoint that in reference to illness, whether mental or physical, the controlling factor is whether the result or effect of such illness will render the employee incapable of properly or safely performing the job. In most cases, an employee's ability to perform properly is inextricably connected to the issue of safety. If the condition of employees creates an undue risk of harm to themselves or fellow workers, arbitrators have consistently held that management has not only a right but a duty to remove them from their job.

Chapter 4 discusses areas that are not adequately documented in the literature, and suggestions are made for possible future research. This is followed by a series of annotations representing some of the pertinent literature of the last decade (1974-1984). A few annotations summarize older material that was included because of its special nature or significance to the issues being investigated. Almost without exception, all the literature cited in the preceding sections of this chapter is included in the annotated bibliography.



# 4

## SUGGESTED FUTURE RESEARCH

Based on the literature review, we have identified several issues meriting further study. The following topics appear to be promising for future research:

- Job performance of the handicapped
- Regulatory and programmatic inconsistencies
- Insurance costs to employers
- Manageable judicial standards under state affirmative action laws
- Job accommodations.

The elements of possible approaches in each area are discussed below.

### JOB PERFORMANCE

In some respects, this is the most important dimension of the social and economic problems associated with employing the handicapped. The law requires that contractors deal equally with qualified handicapped workers. A "qualified" worker means one who can perform the job to standards after reasonable accommodation to the handicap. As a result, there are two dimensions to the costs of hiring the handicapped: how much does it cost to make a reasonable accommodation, and if such an accommodation is made, will the worker be as productive as a non-handicapped worker? The second issue focuses on whether or not the handicapped worker is qualified.

Previous studies on costs of accommodation have concluded that most accommodations routinely made by employers are not very costly. This, however, begs the question of whether these accommodations were effective in

raising the productivity of handicapped workers to the level of non-handicapped, a result that is necessary for the handicapped worker to be qualified under Section 503. It also raises to what extent more extensive accommodations would increase the performance level of more seriously impaired workers sufficiently to qualify them for jobs. Until these two issues are answered, consistent standards for interpreting "reasonable accommodation" and "qualified" handicapped workers cannot be formulated.

A project examining the relative job performance of handicapped workers would be worthwhile. Such a project is, however, likely to offend many handicapped citizens who would feel singled out for special treatment. It should be emphasized that such a study need not be focused on the adequacy of the workers themselves. A finding of below-standard performance might result from any of several factors: (1) limited functional capacity that cannot be raised by job accommodation, (2) inadequate accommodation to the worker's handicap, (3) incorrect matching of worker to job, (4) inadequate preparation of fellow workers to accept a handicapped worker. Conversely, the study might show that handicapped workers are more productive than their non-handicapped counterparts. In this light, such a study could aid both handicapped workers and employers to discover what types of accommodations are needed to help the handicapped compete effectively and to dispell myths about the handicapped.

Such a project would require the cooperation of a number of employers. The design report for this project outlines a methodology for sampling matched pairs of handicapped and non-handicapped workers and measuring performance for each using supervisors' ratings. The most useful application of such an approach would probably be in occupations and industries where job performance is likely to be an issue. This information could come from complaint files or from surveys of employers or organizations working with the handicapped.

#### REGULATORY AND PROGRAMMATIC INCONSISTENCIES

A project examining the full reach of the federal government's regulatory and programmatic impact on the handicapped would be worthwhile. Such a project should identify the relevant policies and programs affecting the handicapped and assess the consistency of formulated policies. An example is

rehabilitation programs that train handicapped workers for jobs only to find that their graduates do not meet the legal and regulation standards for qualified handicapped workers. Another example is a state or federal public safety regulation setting stricter standards than the affirmative action laws. In other words, a handicapped worker might be qualified under Section 503, but meeting workplace safety regulations would require a greater outlay than required for accommodations under Section 503.

A project in this area would involve the following activities: (1) identification of the relevant state and federal regulations, (2) analysis to determine what obligations are placed on employers by each regulation, (3) identification of the inconsistencies and redundancies in the set of regulations viewed as a whole. Particular industries might be singled out for study such as transportation or construction where public safety issues might be paramount, or heavy manufacturing where industrial health and safety might be critical.

#### INSURANCE COSTS TO EMPLOYERS

There are several dimensions of the insurance cost issue that are worth studying. One concern is whether the unwillingness of private carriers to issue health policies covering certain classes of handicapped workers is a barrier to employment. A second concern is whether handicapped workers have a higher incidence of sickness or accidents paid for by employers in higher premiums on insurance policies or directly in self-insurance plans. A third concern arises when laws such as Workers Compensation and Federal Employer Liability Act require employers to assume the liability associated with possibly high-risk employees hired under affirmative action programs. As a fourth issue, it would be useful to examine what benefits are received by employers in the form of lower Workers Compensation or other insurance premiums if they retain rather than terminate workers who are disabled on-the-job and how those benefits compare with the costs of rehabilitating the injured worker.

This project would require cost data collected from employers and insurance companies as well as data on employment and claims experiences of workers obtained in mail interviews of employers and workers.

## MANAGEABLE JUDICIAL STANDARDS

Another promising project would be to examine in detail the judicial experience with state affirmative action and anti-discrimination laws. These laws differ in how the covered population is defined, what duties are required of employers, and what remedies are available to workers whose rights have been violated. Particularly with the absence of a generally recognized right of private action under Section 503, it might be worthwhile to review state court cases that define judicial standards for dealing with issues such as reasonable accommodation and qualified handicapped workers. A summary of state laws is contained in The Law and Disabled People (The President's Committee on Employment of the Handicapped).

The project would entail using LEXIS or some other computerized search system to identify significant case law under each of the state statutes and summarizing the standards that have developed. The implications for national policy in this area could then be assessed by drawing on the experience of the states.

## JOB ACCOMMODATIONS

The most promising avenue for research on job accommodations is the data base being assembled by the President's Committee on Employment of the Handicapped--JANUS. This system has been designed to allow employers to report data on job accommodations made for handicapped employees, which are coded and maintained in a computerized data base for use by other employers. The data are potentially useful for research into what types of accommodations are made in differing employment settings for different types of employees. Usefulness of the JANUS system could be enhanced by a survey of employers whose accommodations seem particularly innovative or cost effective. JANUS data could also be used for estimating the cost of such accommodations. Moreover, with data on the number of employable handicapped, it might be possible to estimate the numbers of workers affected by such job accommodations.

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Key Issue: ALCOHOLISM AND EMPLOYMENT

Title: "Affirmative Action for Alcoholics and Addicts?"

Principal Author: Robert D. Duggan

Source: Employee Relations Law Journal, Vol. 5, Autumn 1979:  
235-244.

Overview: Explains the reasons alcoholics are included in the protected group assuring handicapped people equal opportunity in employment.

Major Findings/  
Conclusions: Demonstrates how a company shows that it is taking affirmative action in employing alcoholics and drug addicts.

Keywords: Affirmative Action; Rehabilitation

Key Issue: ALCOHOLISM AND EMPLOYMENT

Title: Alcoholism and Its Treatment in Industry

Principal Author: Carl Schramm (editor)

Source: Johns Hopkins University Press, 1977

Assession: The George Washington University Library

Overview: Much of the growing concern for alcoholic workers can be attributed to the passage of the Comprehensive Alcoholism Act of 1975. This law established the National Institute of Alcoholism and Alcohol Abuse, which has watched over the growing commitment of the federal government to the responsible treatment of alcohol.

Chapter 1 is an overview of theory and research that has developed regarding the work-related aspects of alcoholism and problem drinking.

Chapter 2 estimates the work-related costs of alcohol abuse to both problem drinking workers and the market sector to be on the order of \$10 billion (based on work by Berry and Boland). Chapter 2's importance lies both in the methodology it develops for estimating the economic impact of chronic health disabilities that are highly illusory and difficult to measure, and for its use of the epidemiologic data developed by Coholan and Room in economic analysis.

Industrial treatment programs have most often been fashioned around the premise that a unitary approach to identification and referral in any given employment should be equally effective in delivering treatment to all workers.

Chapter 3, Trice and Beyer present findings from a study of the application of a formal alcoholism policy in 71 federal civil service installations by supervisors according to the skill level of employees. They conclude that different means for implementing alcoholism policies are necessary for employees in high-status occupations and suggest some ways in which implementation could be improved for lower-skill level workers.

Chapter 4 describes the evolution of union interest in alcoholic workers and discusses some well-founded

suspensions held by union officials regarding alcoholic programs, a problem that must be dealt with in estimating joint union-management efforts.

Part 2 of the book deals with the process of establishing and operating programs in industry and with evaluating their effectiveness. This part of the book includes Chapters 5 through 7.

Chapter 8 suggests rigorous skepticism in analyzing the results of industrial alcoholism programs. The authors outline the many problems of bias and difficulties in measurement that can invalidate evaluation studies and present a model for assessing program effectiveness.

Part 3 examines the Baltimore Employee Health Program (EHP) an experience in the treatment of employed alcoholics through a shared clinical facility sponsored and utilized by a consortium of 12 companies and agencies and the 15 unions representing the labor forces of the participating employers. In chapter 10 a researcher describes the EHP treatment population and compares the social stability, work behavior, and job satisfaction of employed alcoholics with those of a comparison group of non-problem drinking workers.

Major Findings/  
Conclusions:

There is little scientific knowledge available to guide policymakers and persons charged with setting up and administering industrial treatment programs.

Keywords:

Employee Assistance Programs; Alcoholism and Employment; Costs of Handicapped Employment

Key Issue: ALCOHOLISM AND EMPLOYMENT

Title: Employee-Assistance Programs

Principal Author: Martin Shain, Judith Groeneveld.

Source: D.C. Heath and Company, 1980

Assession: George Washington University Library

Overview: The book concerns itself with the philosophy, theory and practice of employee assistance programs (EAPs).

Major Findings/  
Conclusions: The EAP is generally a generic term used to describe the various methods found in the workplace for the control of alcoholism, drug abuse, and certain mental health problems that adversely affect job performance. These methods typically involve both rehabilitative and disciplinary components. Their goals include the restoration of job performance to expected levels as well as the restoration of health to a better condition.

Keywords: Employee Assistance Programs; Job Performance; Alcoholism and Employment

Key Issue: ALCOHOLISM AND EMPLOYMENT

Title: Spirits and Demons at Work: Alcohol and Other Drugs on The Job

Principal Author: Harrison Trice, Paul Roman

Source: Cornell University, 1978

Accession: The George Washington University Library

Overview: This book is a reissue and update of a volume published in the early 1970's. The authors focus upon the relations between the use and abuse of mood-altering substances and the performance of work roles. Incorporating facts that stem from the nature of abuse, the book evaluates the potential effectiveness of various strategies of intervention. The volume is divided into three parts. Chapter 1 discusses the social aspects of abuse, the extent of the problem in society, and some of the reasons why employers should be concerned with control. Chapter 1 also presents in detail the costs of deviant drinking to the employer. Studies that systematically and comprehensively attempt to compute the dollar costs are cited here.

Chapters 2 and 3 present a similar overview. Here the authors contrast facts with hysterical concerns that the activities of work organizations will soon be grossly altered by the impact of drug abuse. Chapter 4 focuses upon risk factors, the characteristics of job roles that may make alcohol or drug abuse particularly attractive to employees and which provide them with opportunities for such abuse to go unnoticed.

Chapter 5 discusses the impact of abuse on specific job behaviors, examining the relationship between such deviance and a) work efficiency, b) turnover, c) cover-up, d) absenteeism, and e) accidents. This chapter is intended to serve three main purposes: 1) it summarizes the results of a large set of research studies relating to on-the-job behaviors of abusers of alcohol and drugs; 2) knowledge of work behaviors that may be useful in company programs oriented to the identification of deviant drinkers and drug abusers is presented; 3) an outline of behavior patterns serves to place the problem in perspective.

Chapter 6 describes typical reactions to alcohol abuse in work organizations and outlines basic barriers to intervention that are built into the supervisor's role

as well as into the supervisor-subordinate relationship. The 3rd part of the book concerns itself with the bases for policy program development. Chapter 7, for example, outlines fundamentals of the intervention strategy of constructive confrontation. Given the variability of local situations, the authors do not attempt to spell out a policy program feasible for all organizations. Instead they outline barriers to program implementation that guide policy formation in adjusting to the characteristics of specific organizations. Chapter 8 focuses upon the importance of union-management cooperation in policy program development and implementation. Here the authors describe research on alternative cooperative patterns. The final chapter, Chapter 9, explores various treatment resources that may be used to manage alcohol and drug abusers whose use patterns have exceeded their personal control.

**Major Findings/  
Conclusions:**

The work-based costs of problem drinking are of three types: 1) those stemming directly from the employee's job behavior; 2) the impact of the drinker on other employees; and 3) the costs of "doing something" about the drinker once the limits of tolerance are reached. Chapter 5 reviews the patterns of absenteeism and performance inefficiency.

The problem drinker's absenteeism is disruptive primarily because it is erratic. The occasions of his absenteeism simply can't be predicted. This absenteeism may greatly disrupt the assigned activities of work groups, particularly where jobs are closely interdependent and a high degree of internal coordination is necessary. Probably a more significant problem is partial absenteeism. This occurs when an employee erratically leaves his work post to obtain a drink to attempt recovery from the effects of his drinking, or simply to cover up the signs of intoxication and hangover. This obviously disrupts work performance. A third type of absenteeism, which applies mainly to white collar employees, is "on the job" absenteeism. This occurs when the worker is at the job but due to drinking or a hangover is in such poor condition that he is unable to perform assigned tasks. The authors found that overall absenteeism of women is greater than for men: Furthermore, absenteeism patterns remain a reliable clue to alcohol and drug abuse among female employees.

**Keywords:**

Absenteeism; Job Performance; Drug Abuse and Employment; Alcoholism and Employment; Costs of Handicapped Employment

Key Issue: ALCOHOLISM AND EMPLOYMENT

Title: Dealing with Alcoholism in the Work Place

Principal Author: Richard M. Weiss

Source: The Conference Board, 1980

Accession: George Washington University Library

Overview: This is the third Conference Board report on the problems of alcoholism in the business world. The first report was published in 1958, the second study in 1969. The report is based on findings from a survey of 3,600 businesses, mostly those with more than 1,000 employees. A total of 1,354 companies responded. Of those 346 or 26% had formal alcohol rehabilitation programs. In the decade since the last study, the number of companies responding to the problem has proliferated remarkably. Of the 346 programs described in the current report, only 61 were operating in 1970. In Chapter 8, the author very briefly discusses the role of the federal government. In terms of the Rehabilitation Act of 1973, he points out that the statute requires that contractors and grantees covered by the act not automatically deny employment or benefits to persons solely because they might find their status as alcoholics or drug addicts personally offensive, any more than they can discriminate against someone who has another condition or disease such as cancer, etc., unless its manifestation or its conduct renders him ineligible.

Major Findings/  
Conclusions: A well-regarded therapy now coming into increased use is the resident alcohol treatment facility, typically a four-week structured rehabilitation program. This treatment is costly but insurance coverage, difficult to obtain up to a few years ago, is now readily available. Two-thirds of responding companies carry insurance for treatment at these facilities.

working in the alcohol field, but the courts have yet to provide definitive answers.

Keywords: Affirmative Action; Rehabilitation Act; Alcoholism and Employment; Reasonable Accommodation

Key Issue: ALCOHOLISM AND EMPLOYMENT

Title: Occupational Alcoholism Programs

Principal Author: Richard L. Williams, Gene H. Moffat.

Source: Charles C. Thomas Publishers, 1975

Accession: George Washington University Library

Overview: The book presents insights into the problems and complexities of management control systems designed to combat alcoholism in the workplace.

Major Findings/  
Conclusions: This objective is revealed in the description of programs now functioning in some of the giant corporations in the U.S.; e.g., "Long-Term Experience with Rehabilitation of Alcoholic Employees," Illinois Bell Telephone Co., "Formulation of an Alcoholism Rehabilitation Program at the Boston Edison Company; "Insight: A Program for Troubled People," Utah Copper Division, Kennecott Copper Corporation.

Keywords: Alcoholism and Employment; Rehabilitation

Key Issue: ARBITRATION

Title: "Title Seven Arbitration in Action"

Principal Author: Robert Coulson

Source: Labor Law Journal, Vol. 27, March 1976: 141-151

Accession: U.S. Department of Labor Library

Overview: Responding to a request from the Equal Employment Opportunity Commission (EEOC), the American Arbitration Association (AAA), reviewed its case files to determine how labor arbitrators are responding to job discrimination issues. At the same time, the AAA sent out a survey questionnaire to 704 labor arbitrators who had decided at least one grievance in 1974; 260 responded.

Major Findings/  
Conclusions: Reliance in the administrative agency or the courts has created an increasing backlog of unresolved employment discrimination charges. At the same time, as courts further define employer obligations, companies and unions are working to renegotiate their collective bargaining contracts and employment relationships. The article concludes that a lack of consensus exists among labor arbitrators as to their appropriate role in job discrimination issues and as to the appropriate remedies including whether contractual powers are usually adequate. Parties would be well advised to clarify these matters with each other and the arbitrator, in an effort to avoid misunderstanding about the expectations before the arbitrator makes a final award.

Keywords: Discrimination; Civil Rights Act of 1964; Arbitration

Key Issue: ARBITRATION

Title: "Arbitration and Mental Illness: The Issues, the Rationale, and the Remedies"

Principal Author: Dorothy J. Cramer

Source: The Arbitration Journal, Vol. 35, No. 3, September 1980, 10-21.

Accession: Library of Congress

Overview: The article discusses management response to employee malfeasance. The author reviewed cases published in the Bureau of National Affairs, Labor Arbitration Reports and the Commerce Clearing House, Labor Arbitration Awards through July 1978. The criterion for inclusion of arbitral remedies in the study was some reference in the opinion to the aggrieved employee's emotional condition. These opinions were analyzed to discover, what patterns, if any, exist when mental illness is a factor. Cases that satisfied the criterion included: discipline and discharge; refusal to reinstate after resignation; nondisciplinary cases, including removal from active employment other than by termination; refusal to reinstate after sick leave, leave of absence, layoff or suspension; and demotions, promotions and transfers.

Major Findings/  
Conclusions: The primary concerns of the majority of arbitrators when faced with evidence that the grievant is, or had been, mentally ill are fault, safety and the ability to perform. It is the arbitrator's assessment of the impact of employee's mental condition on these three factors that determines his/her final opinion in the matter. Arbitral decisions are rarely clear-cut and concrete because of the ambiguity and uncertainty surrounding the condition of mental impairment. Although rarely cited as a reason, the one philosophy that appears to summarize the arbitrator's approach is that employees with mental illness should be given one last chance to prove their ability to work safely and efficiently, provided they seek professional help and a medical expert is willing to certify that they are able to return to work. The fact that employees are or have been mentally ill will not shelter them indefinitely from discharge or termination if their condition impairs job performance, creates safety risks, or leads to continued misconduct. At some

stage, the balance will shift in favor of the employer and his right to expect safety, efficiency, and productivity.

**Keywords:** Mentally Handicapped; Arbitration

Key Issue: ARBITRATION

Title: "The Arbitration of Alcohol and Drug Abuse Cases"

Principal Author: Tia Schneider Denenberg

Source: The Arbitration Journal, Vol. 35, No. 4, December 1980, 16-21

Accession: Library of Congress

Overview: Employees in all categories have shown to be susceptible to chemical dependency. These employees also show poor job performance, absenteeism, lateness and erratic behavior. In many industries, the arbitrator is looked to to deal with these employees; however, there is a divergence of views among arbitrators about what alcoholism and drug abuse are and what approach should be taken with those who suffer from them. The analysis in this article is based upon a survey of more than 200 alcohol and drug abuse cases published in Labor Arbitration Reports in the last 30 years.

Major Findings/

Conclusions: Many employers with union support encourage alcoholics to undergo treatment rather than disciplinary action. Yet the length of time allowed for treatment may also be an issue. If an employer offers rehabilitation leave, must it offer a "reasonable" period of time before expecting the employee to return to work? "Reasonable" tends to be undefinable a priori since many sophisticated treatment programs are open-ended and vary with individual needs. A look at arbitration awards over the past 30 years suggests that alcoholism and drug abuse cases are troubling because they

Key Issue: ARBITRATION

Title: "Arbitrators View Alcoholic Employees: Discipline or Rehabilitation?"

Principal Author: Michael Marmo

Source: The Arbitration Journal, Vol. 37, No. 1, March 1982, 18-27.

Accession: Library of Congress

Overview: In the last few years, society has become increasingly aware of the pervasiveness of alcohol dependency. The question then arises: has the belief that persons with an alcohol dependency can rehabilitate themselves been accepted in arbitration? The author examines 103 arbitration decisions involving the discipline of alcoholic employees. These decisions represent cases published in Labor Arbitration Reports from 1963 through the summer of 1980. The article includes discussion of management attempts at rehabilitation; the union's position; the arbitrator's decision when rehabilitation was considered; cases where rehabilitation was considered, then rejected; instances where rehabilitation was considered, then accepted; and the mechanics of rehabilitation: how and when.

Major Findings/Conclusions: Two diametrically opposing views seem to prevail regarding the treatment of employees experiencing problems with alcohol dependency. One opinion is that the use of progressive discipline will cause employees to modify their behavior. The other opinion is that alcoholics suffer from an illness and therefore do not have the power to change their own behavior but rather must undergo treatment for their illness. A review of arbitral remedies points to labor and management unwillingness to decide which of these two approaches should be used, thereby leaving, by default, this decision to arbitrators.

Keywords: Arbitration; Alcoholism and Employment; Rehabilitation

Key Issue: ARBITRATION

Title: "The Developing Notion of Employer Responsibility for the Alcoholic, Drug Addicted or Mentally Ill Employee"

Author: Janet Maleson Spencer

Source: St. John's Law Review, Vol. 53, No. 4, 1979

Accession: Library of Congress

Overview: The author reviews relevant federal and state laws prohibiting handicapped discrimination, the decisions of arbitrators and workmen's compensation laws.

Major Findings/  
Conclusions: The article finds that there is pressure on employers to develop constructive methods of dealing with alcoholics, drug addicts and the mentally ill. Some federal and state laws are forcing employers to recognize the possibility of successful rehabilitation by requiring the employer to include in its employ persons who have suffered from alcoholism, drug addiction and mental illness in the past. The federal and some state laws further require the employer to accommodate these employees. While the employer has the right to discharge anyone who is not performing his/her job satisfactorily, the employer presumably cannot do so if the employee would be able to perform with some accommodation by the employer. The duty to accommodate does not per se require an occupational rehabilitation program.

On the whole, with some inconsistencies in the area of drug addiction, arbitrators expect employers not only to recognize that there is a possibility for rehabilitation but that they assume some responsibility for undertaking rehabilitation before discharging the employee. This rehabilitation can range from giving the employee a chance to rehabilitate himself/herself to taking positive steps to encourage and supervise the rehabilitation. In addition, the placing of economic liability on employers for mental disorders caused by job stress under workmen's compensation laws may be encouraging employers to assume responsibility for rehabilitation of some troubled employees. Whether or not this liability will extend to alcoholism or drug addiction caused by job tensions is not certain.

Keywords: Alcoholism and Employment; Drug Abuse and Employment; Reasonable Accommodation; State Law

Key Issue: ARBITRATION

Title: "Arbitration and the Employment Rights of the Physically Disadvantaged"

Principal Author: B. W. Wolkinson

Source: Arbitration Journal, Vol. 36, No. 1, March 1981: 23-30

Accession: Library of Congress

Overview: Physically handicapped workers are protected from arbitrary dismissal based on the "just cause" provisions of collective agreements. Restrictions have been placed on management's right to penalize workers based on a physical handicap.

Major Findings/  
Conclusions: Under OFCCP, contractors must consider reasonable accommodations that can be made for the individual's handicap. Also important are the rights afforded such workers by individual common law principles evolving from grievance arbitration. The expanded reach that arbitrators are giving to "just cause" contract provisions parallels the new protection afforded the handicapped by the Rehabilitation Act of 1973.

Keywords: Arbitration; Disability

Key Issue: COSTS OF HANDICAP EMPLOYMENT

Title: "Employee Insurance Benefit Plans and Discrimination on the Basis of Handicap"

Principal Author: Larry D. Baker, Catherine Karol

Source: DePaul Law Review, Vol. 27, 1978: 1013-1046

Accession: U.S. Department of Labor Library

Overview: In life, health, disability, accident, and workmen's compensation insurance, the physically and mentally handicapped have generally been regarded as undesirable risks. The corresponding reluctance to extend equal coverage has served to deny equal employment opportunities to these persons. Different treatment of the handicapped by insurance companies has resulted in a double hardship for affected persons.

Major Findings/  
Conclusions: Unanswered questions remain. Is an employer who denies a job applicant employment, the perpetrator of discrimination, or is guilt more properly assessed against the insurance companies who control costs and who cause the employer to perceive the handicapped applicant as a higher risk? Second, are the higher costs and resultant reluctance on the part of employers discriminatory or are they in fact rational reflections of the risk applicable to the handicapped? The authors examine these issues and responsibilities under the law of both the employer and the insurer. Some possibilities for reform are suggested.

Keywords: Insurance Costs; Discrimination

Key Issue: COSTS OF HANDICAP EMPLOYMENT

Title: "Economic Costs and Benefits of Private Gainful Employment of the Severely Handicapped"

Principal Author: Doug W. Cho and Allen C. Schuermann

Source: Journal of Rehabilitation, Vol. 46, No. 3, 1980: 28-32

Accession: The George Washington University Library

Overview: The objective of this paper was to investigate the economic efficiency of a relatively new approach to the employment of the handicapped. The approach is a system of privately owned and managed companies, i.e., "handicap industries" which specialize in handicapped employment. In this setting handicapped and non-handicapped perform in the production process. This is a critical difference from sheltered workshops where all production is performed by the handicapped. Since they operate like regular businesses, they are also subject to the same government regulations such as minimum wage laws.

Major Findings/  
Conclusions: The operation of CIC, Center Industries Corp., is profiled. The operation of CIC may be conceptualized as a process by which unemployable handicapped individuals are rehabilitated into productive workers. The economic cost of the process is the cost in excess of the cost of employing able-bodied workers. Thus, the additional cost associated with adaptive or corrective devices and work station modifications are considered the economic cost of employing handicapped.

Economic benefits of CIC employment were estimated from the gross earnings and fringe benefits of the handicapped workers. Fringe benefits (e.g., group hospital insurance, paid holidays, and state unemployment tax) were estimated to be 25% of the gross earnings. Net benefits were measured as the difference between the gross benefits and the economic cost. The estimated benefits and costs from this study indicate that the benefits cost ratio can easily be cost-benefit analyses of job training programs for the disadvantaged and minorities. The benefit-cost ratio for the Job Corps Program was estimated to be between 1.05 and 1.69.

Costs and benefits depend on several factors. The nature of the job and the severity of the disability are the most important factors. Also of importance is the scale of operation. Increasing the scale of operation may reduce the average cost due to specialization and more effective use of adaptive devices.

Keywords: Costs of Handicap Employment; Handicap Industries



Key Issue: COSTS OF HANDICAP EMPLOYMENT

Title: Labor Market Participation of Vocational Rehabilitation Clients

Principal Author: S. Misra

Source: West Virginia University, Vocational and Rehabilitation Research and Training Center, 1982

Accession: U.S. Department of Education, National Institute of Handicapped Research, Washington, D.C.

Overview: This project was a two-phased study. The following objectives were covered by Phase 1: (1) a comparison of the labor market and employment experience of the VR handicapped with the general population who are in similar employment situations; (2) an estimation of the effect of disability on employment participation of the handicapped; (3) an examination of the impact of disability on employment and earnings status; (4) a determination of occupational and industry status of the disabled; (5) a determination of the extent to which the elements of the work career before disablement affect work adjustment; and (6) a summarization of work histories of VR handicapped using mobility as a measure.

Phase 2 objectives included (1) examination of employer attitudes, policies and practices; (2) an assessment of the extent to which the economic disincentives in the public assistance programs inhibit labor market activity; (3) an evaluation of the effects of a variety of laws, e.g., the Tax Reform Act of 1976 - Title II Architectural and Transportation Barrier Removal - expenses up to \$25K/year deductible by businesses; the Tax Reduction Simplification Act - a tax credit of 60 percent of the first \$4,200 of earned wages of a new handicapped employee; and (4) an examination of the influence--adverse or favorable--of labor unions' attitudes and policies toward handicapped employment.

Data for the study came from three sources including a mail survey using a stratified sample of 2,000 VR

clients per year who were successfully closed and placed in competitive employment by the State VR Agency (Region III) during two select years. Clients were distributed across six disability categories.

Major Findings/  
Conclusions:

The study uncovered the complex economic, social, and attitudinal factors associated with successful labor market participation by vocationally rehabilitated handicapped.

Keywords:

Personnel Practices; Attitudes; Costs of Handicapped Employment

Key Issue: COSTS OF HANDICAP EMPLOYMENT

Title: Discrimination Against Handicapped Persons, the Costs, Benefits and Economic Impact of Implementing Section 504 of the Rehabilitation Act of 1973 Covering Recipients of HEW Financial Assistance

Principal Author: Dave M. O'Neill

Source: U.S. Department of Health, Education and Welfare, May 1977

Accession: National Technical Information Service

Overview: This report examined the costs and benefits of implementing Section 504. The main areas investigated include employment practices, program accessibility, and the provision of elementary and secondary education. The report contains tables, footnotes which include references, and appendices presenting data on disability, discrimination, and earnings and a list of state laws on special education.

Major Findings/  
Conclusions: In all cases, results showed that pecuniary benefits provide substantial offsets to the pecuniary costs involved. The analysis is limited by its exclusion of transfer payments, distribution effects, administrative costs, and costs and benefits of existing law.

Keywords: Mentally Handicapped; Physically Handicapped; Costs of Handicapped Employment

Key Issue: COSTS OF HANDICAP EMPLOYMENT

Title: Regulation and Small Business Participation in the Federal Contract Market: The Effect of Section 503

Principal Author: Robert Premus, David Karns

Source: Small Business Administration, June 1982

Accession: National Technical Information Service

Overview: The primary purpose of the study was to examine the impact of the equal employment opportunity provisions of the Rehabilitation Act on (1) the cost structure of small businesses and (2) employment opportunities for the handicapped. The affirmative action provisions of the Rehabilitation Act and the relevant federal regulations require businesses to accommodate the needs of impaired employees. Since structural modifications and other accommodations can impose proportionately greater costs on small businesses, this research study dealt with the problems which small businesses encounter in complying with the law.

The research design included the participation of small businessman through the formation of a panel. The panel served as a focus group in the design of a survey instrument and in reviewing the preliminary final report. The panel also monitored and evaluated the research project. Samples of federal contractors from three time periods were surveyed about their compliance experiences. Survey data were combined with aggregate data on the firms in the data analysis. Finally, the data were used to develop a simulation model of the probable impact of extended coverage. The final report includes policy recommendations on how SBA can alter the current and proposed laws and regulations to provide small businesses with a broader range of compliance alternatives.

Major Findings/  
Conclusions: Three specific objectives were addressed by this study: (a) What have been the small business compliance costs and what benefits have businesses realized through compliance? (b) What has been the effect of perceived, and real, compliance costs on the willingness of small businesses to bid on federal contracts, and has the effect decreased small business competitiveness? (c) What would be the economic

effect on the small business sector as a whole, if the handicapped were included as a protected class under the Civil Rights Act of 1964?

Keywords:

Rehabilitation; Costs of Handicapped Employment;  
Affirmative Action



Key Issue: COSTS OF HANDICAP EMPLOYMENT

Title: "Economic Incentives and Employment of the Handicapped"

Principal Author: Susan A. Reagles

Source: Rehabilitation Counseling Bulletin, Vol. 25, No. 1, September 1981: 13-19

Accession: The George Washington University Library

Overview: The author discusses economic issues with regard to employing the handicapped. These include insurance rates, attendance rates, production levels and job-accommodation as well as potential financial benefits from tax credits, federal funding of Projects With Industry and the Comprehensive Employment and Training Act. The author bases her facts on findings from a 1977 Dupont survey for 1,452 disabled employees.

Major Findings/  
Conclusions:

Many employers fear that handicapped personnel increase company medical insurance expenses. In fact, however, workers' compensation rates are determined by the relative hazards of the industrial occupations and the company's accident records.

Adequately trained and properly placed workers and excellent safety records help keep down insurance rates. Surveys of handicapped employees show that the majority have average or better safety records on and off the job.

The categories of tax credits that are available to the employer who hires the handicapped include:

1. Section 190 of the Tax Reform Act of 1976 (PL 94-455). This law provides an elective, current tax deduction for expenses made to remove architectural and transportation barriers.
2. Targeted Job Tax Credit. This law provides a tax credit that reduces the expense deduction for 50% of the qualified <sup>cost</sup> and 25% of the second



3. The Work Incentive Program. Similar to TJTC, here eligible workers are applicants or recipients of Aid to Families with Dependent Children.
4. Projects With Industry was authorized through the 1968 amendments to the Vocational Rehabilitation Act (PL 90 - 341). The program offers employers an opportunity to employ, train, and furnish services to the handicapped.
5. CETA amendments. PL 95 - 524, 92 Stat. 1909 have continued funding to states and local government authorities for employment in public sector jobs, transitional employment positions, and private sector opportunities.

Keywords: Tax Credits; Costs of Handicap Employment



Key Issue: DISABILITY REGULATIONS

Title: "Heckler v. Campbell and the Grid: Are Disability Claimants Entitled to Examples of Suitable Jobs?"

Source: American Journal of Law and Medicine, Vol. 9, Winter 1984: 501-515.

Accession: Congressional Research Service

Overview: The Social Security Administration adopted the medical-vocational guidelines (the grid) in 1978 to improve consistency and efficiency in disability claim adjudications. The grid takes administrative notice of the availability of suitable jobs to claimant's capabilities, eliminating the need to make such a determination on a case-by-case basis.

Major Findings/  
Conclusions:

In Heckler v. Campbell, the Supreme Court held that the grid is valid and that the Secretary of Health and Human Services cannot be required to give specific examples of jobs available in the national economy. In so doing, the Court reversed the Second Circuit, which had required the Secretary to give claimants examples of jobs suited to their individual characteristics to assure them adequate notice of the issues involved in their hearings.

This case comment contends that the Supreme Court misinterpreted the Second Circuit's purpose in requiring the Secretary to provide specific examples of available jobs. Nonetheless, the comment argues that the Supreme Court decision does not foreclose requiring such examples to assure adequate notice and to aid in resolving adjudicative factual issues. This comment concludes that such

Key Issue: DRUG AGUSE AND EMPLOYMENT

Title: "Must you Still be Alert to Employee Drug Abuse?"

Source: Personnel Management, January 10, 1983

Accession: Applied Management Sciences, Inc.

Overview: Screening out persons who are addicted to drugs in the employment process is a means used to avoid employee drug problems.

Major Findings/  
Conclusions: A few years ago, at the height of the drug abuse problem, the New York Chamber of Commerce outlined some special considerations for review by employers. These are:

- Applicant screening. Because drugs are administered in a number of ways, marks may not be present on applicants' arms to indicate injections. Screening through urinalysis is not always effective either. When an addict faces a physical examination, he or she usually is clever enough to abstain for a sufficient time to allow traces in urine samples to disappear.
- Referrals. Employers seeking to refer drug abusers to rehabilitation centers can face waiting lists up to a year. This leaves management with the decision of firing the employee knowing there is little chance for the employee's eventual help or keeping the worker on the payroll while waiting for an opening in a rehabilitation center.
- Early detection. Most employers believe this should have top priority. The choice usually is to discharge the employee before other employees are involved or work with the employee before the involvement is too great to consider rehabilitation.
- Policy. Many problems can be avoided, says the Chamber of Commerce, by making job performance the prime yardstick.

During the past few months employee drug addition has been receiving increased attention. This is an area in which an analyzation of employee performances and planning will be time well spent.

Keywords: Screening Out; Drug Abuse and Employment



Key Issue: ENFORCEMENT OF AFFIRMATIVE ACTION LAWS

Title: Fair Employment Compliance

Source: Management Resources, Inc.

Accession: Applied Management Sciences, Inc.

Overview: Fair Employment Compliance is a bimonthly newsletter containing the most up-to-date information and informed opinion concerning equal employment opportunity issues, including affirmative action, protection under handicap law and sundry judicial decisions on bias charges.

Major Findings/  
Conclusions: The following information is a summary of major decisions concerning violations of OFCCP regulations and state antidiscrimination law concerning the handicapped.

American Motors Corporation v. Labor and Industry Review Commission--Wisconsin Circuit Court rules that short people are entitled to job protection under Wisconsin handicap discrimination law. The law defines handicap as a disadvantage that makes achievement unusually difficult. American Motors rejected a female applicant but did not show that her lack of height made her unable to perform job. 3/25/82, Issue No. 249.

Scanlon v. Atascadero State Hospital--San Francisco Ninth Circuit Court of Appeals holds that Section 504 covers employees of federally assisted programs only when that assistance is primarily intended to provide jobs. This is the fourth appellate court to make this ruling.

Beam v. Sun Shipbuilding and Dry Dock Company--Philadelphia Third Circuit Court of Appeals holds that handicap complainants have no private right to sue under Section 503. Six other appellate courts upheld same ruling. 8/10/82, Issue No. 258.

Pushkin v. Regents of the University of Colorado--Tenth Circuit Court of Appeals of Denver rules that the hospital made stereotyped generalities about a job applicant's handicap (multiple sclerosis) and this was not a valid reason for rejection of employment. Ruling was made under Section 504. 11/25/81, Issue No. 242.

Coleman v. Casey County Board of Education--The U.S. District Court of Kentucky ruled that federal law (Section 504) against handicap bias supercedes state rule requiring all school-bus drivers to have two functioning natural legs. 12/10/81

Baltimore and Ohio Railroad Company v. Bowen--The Maryland Court of Special Appeals ruled that an employer has the burden of proving a "reasonable probability" of future injury before rejecting a handicapped applicant. The possibility of future injury is not sufficient proof. 11/25/84, Issue No. 308.

Smith v. Administrator of Veteran Affairs--The U.S. District Court of California ruled that hospital's dismissal of epileptic was unlawful. The hospital rejected reinstatement of handicapped individual on the grounds that his condition could create a danger both to himself and to patients. The Court found that the agency based its refusal on unreasonable fear of what might happen if epileptics are employed. Court ruled that epileptic was entitled to "reasonable accommodation" that included making sure employee took medication. 11/10/83, Issue No. 285.

Boyd v. U.S. Postal Service--The U.S. District Court of Washington ruled that a Vietnam veteran's poor attendance record disqualified him from bias charges under Section 504 which provides protection to qualified handicapped applicants. Veteran was not qualified because of poor work record. 11/10/83, Issue No. 285.

v. Schumberger Well Services. Human Rights Commission of New Mexico orders oil company to rehire engineer layed off because of multiple sclerosis. Complainant had greater seniority and higher performance ratings than other engineers.

Folz v. Marriott Hotel Corporation--U.S. District Court of Missouri awards cash to manager who was falsely terminated for poor performance when real reason was handicap. Jan. 10, 1984, Issue No. 288

LeStrange v. Consolidated Rail Corporation--Third Circuit Court of Appeals, Philadelphia, says that under Section 504 complainant is not required to prove that federal aid received by employer was primarily for employment purposes. Oct. 23, 1983, Issue No. 284.

Huff v. Israel--U.S. District Court of Georgia rules against complainant on grounds that he had been terminated because of drunk driving convictions not because he was an alcoholic. Mar. 10, 1984, Issue No. 292.

Keywords:

Handicap Definition; Intended Beneficiaries; Right of Action; Blanket Exclusion; Reasonable Probability; Equal Employment Opportunity; Affirmative Action



Key Issue: ENFORCEMENT OF AFFIRMATIVE ACTION LAWS

Title: "Discrimination and Federal Grants: An Overview of Recent Decisions Concerning the Rehabilitation Act"

Principal Author: Larry Allen Bakken, Jeff Alan VanZandt

Source: Urban Lawyer, Vol. 15, Fall 1983, 805-815

Accession: Library of Congress

Overview: The article reviews recent cases addressing alleged violations of the Rehabilitation Act and, in particular, two provisions of the act which prohibit discrimination: (1) the requirement that employers working on certain government contracts take affirmative action to employ qualified handicaps; and (2) the prohibition against qualified handicaps being denied participation in or benefits from any federally financially assisted program. Two major issues face the courts concerning these provisions. They are whether the claimant has a private right to bring a cause of action and whether the claimant was the intended beneficiary of the federal financial assistance.

Major Findings/  
Conclusions:

The majority of courts which have ruled recently on the issue have concluded that there is no implied right to a private cause of action under Section 503 of the Rehabilitation Act. The courts have supported this conclusion by finding a lack of legislative intent to allow a private cause of action and by finding that sufficient administrative remedies are presently available to the aggrieved party.

Under Section 504, however, the courts recognize a private right of action. The Section 504 claimant is afforded the same rights, procedures, and remedies as under the Civil Rights Act of 1964--specifically, those granted under Section 604. Even with the availability of a private right of action, some courts require the claimant to exhaust all available administrative remedies beforehand, and once in court, it is usually required that one of two elements must



**Keywords:**           Rehabilitation Act; Right of Action; Affirmative  
Action; Intended Beneficiaries



Key Issue: ENFORCEMENT OF AFFIRMATIVE ACTION

Title: "Litigation for the Rights of Handicapped People"

Principal Author: Sy DuBow

Source: DePaul Law Review, Vol. 27, 1978: 1101-1116

Accession: U.S. Department of Labor Library

Overview: The article discusses some practical aspects involved in enforcement of the statutory right of handicapped individuals (such as provided by Section 504 of the Rehabilitation Act) through litigation.

Major Findings/  
Conclusions: The author includes his commentary on both offensive tactics for the plaintiff as well as his suggestions for overcoming defenses posed by recipients of federal monies.

Keywords: Equal Employment Opportunity; Enforcement and Remedies; Rehabilitation Act

Key Issue: ENFORCEMENT OF AFFIRMATIVE ACTION LAWS

Title: Implied Rights of Action Under the Rehabilitation Act of 1973."

Principal Author: John E. Finn.

Source: Georgetown Law Journal, Vol. 68, August 1980, 1229-1260.

Accession: Library of Congress

Overview: The article contends that both case law and social policy support implied private rights to sue for enforcement and for damages under Sections 503 and 504 of the Rehabilitation Act. The author presents a history of case law of implied private rights of action including: (A) Statutes with no legislative intent to benefit private parties or to permit private enforcement; (B) Remedial statutes in which expressly provided administrative remedies are inadequate to redress individual grievances; and (C) Statutes in which the act focuses primarily upon protection of individual rights.

Major Findings/  
Conclusions: In fact, if not in theory, the Supreme Court treats remedial civil rights statutes differently from economic - regulatory statutes when implied private rights of action are claimed. Even when such statutes contain administrative enforcement schemes, the Court concludes that Congress intended to allow individuals to vindicate in court their statutorily-created rights. This result should be recognized expressly by the rule that, in the case of remedial civil rights statutes, the plaintiff's rights to a private right of action will be presumed in the absence of clear and convincing evidence that Congress did not intend to create such a right.

Keywords: Anti-Discrimination; Rehabilitation Act; Right of Action

Key Issue: ENFORCEMENT OF AFFIRMATIVE ACTION LAWS

Title: "Rehabilitating the Rehabilitation Act of 1973."

Principal Author: Richard W. Hokamp

Source: Boston University Law Review, Vol. 58, March 1978, 247-274.

Accession: U.S. Department of Labor Library

Overview: This article evaluates the interrelationship between and effectiveness of Sections 503 and 504. Factors that are discussed include: Coverage prerequisites; legal obligations; enforcement procedures and remedies and coverage over the complainant.

A. Coverage Prerequisites

Both Sections 503 and 504 protect only "qualified handicapped individuals." However both sections have different definitions of the term "qualified." Section 503 only covers job applicants and employees of an employer who holds a Section 503 contract. A qualified handicapper is one who is capable of performing a particular job with reasonable accommodation to his or her handicap. Section 504 defines qualified similarly in the employment contexts as well; e.g., with reference to educational assistance.

Under 503, parties who owe a statutory duty to qualified handicappers are those employers who satisfy three requirements. In contrast, 504 applies to every recipient of federal financial assistance regardless of the amount. Further, 503 applies only to federal contractors; 504 applies to recipients of grants, loans, contracts, etc.

B. Legal Obligations

Both sections prescribe conduct within the area of employment practices although 504 regulates areas not covered by 503. Section 503 requires a covered employer to take affirmative action in employment; 504 prohibits discrimination but imposes no affirmative action obligation. Thus, the question whether federal dollars received are covered by 503 or by 504 may determine both the existence and the extent of the legal obligations covered by the employer.

### C. Enforcement Procedures and Remedies

Under both sections, the time of which the right to judicial review attaches is unclear. The possible existence of additional administrative enforcement methods available to OFCCP under 503 and to compliance agencies under 504 is also unsettled. The range of remedies available under 504 is unsettled; 504 does correspond to 503 in authorizing withholding of payments, contract termination and debarment from future federal dollars; 503 authorizes other remedies, including injunctive relief.

### D. Coverage Over the Complainant

Section 503 authorizes several procedures for determining whether a person satisfies the definition of "handicapped." But 503 provides no guidance with regard to determining "qualified." A case-by-case analysis is the only feasible method. Other civil rights programs utilize a goal timetable approach to implement antidiscrimination policies. Under Executive Order 11,246, this approach covers women and minorities. If the labor market availability rate for qualified women significantly exceeds the contractor's employment rate of women within the job group, then the contractor is required to set goals and timetables to correct this underutilization. Because handicaps differ in degree as well as in kind, the development of this approach for the handicapped would appear to be unfeasible.

or Findings/  
clusions:

After analyzing several enforcement problems that have arisen under section 503 and recommending guidelines for the future resolution of these problems, the article recommends the most effective method of enforcing both sections of the law through a single enforcement program. Finally, legislative and administrative suggestions are made to achieve the most effective implementation of Sections 503 and 504.

Numerous agencies enforce 504--this multiple agency scheme produces a conflict of interest within the compliance agency because that agency is at once responsible for funding and developing federally assisted programs and for enforcing the provisions of 504. This situation has resulted in an agency unwillingness to enforce affirmative action programs. Consolidation of 503 and 504 would eliminate this

condition. Also, current legislation imposes different legal obligations depending upon the characterization of federal funds received. This is irrational, and a uniform method to require affirmative action should be adapted.

Keywords: Rehabilitation Act, Affirmative Action; Enforcement and Remedies; Handicap Definition



Key Issue: ENFORCEMENT OF AFFIRMATIVE ACTION

Title: "Employment Discrimination Against the Overweight"

Principal Author: Eric Matusewitch

Source: Personnel Journal, Vol. 62, No. 6., June 1983: 446-450.

Accession: George Washington University Library

Overview: The article examines the rights of obese individuals under current state and federal legislation.

Major Findings/  
Conclusions: Title VII of the Civil Rights Act of 1964 offers no direct aid to the obese. Coverage is afforded under Section 503 of the Rehabilitation Act provided excessive weight results in or produces a record of physical or mental impairment which substantially limits a major life activity. Some major life activities of the obese may be limited by medical conditions associated with obesity, such as heart disease, diabetes, and pulmonary and hepatic dysfunction. Department of Labor regulations implementing Section 503 establish three tests for determining when qualified handicapped individuals may be legitimately screened out of employment. Mental and physical job qualification requirements that tend to screen out such individuals must be "Job-related and ... consistent with business necessity and safe performance of the job."

Forty-four states and the District of Columbia have enacted statutes that offer protection to handicapped persons. Arizona, Delaware, Louisiana, North Dakota, South Carolina, and Wyoming are the only states that have not enacted statutes banning employment discrimination against the handicapped. The antidiscrimination laws of Alabama, Arkansas, Idaho, Mississippi, and South Dakota apply only to public employers.

Keywords: Obese; Rehabilitation Act; State Law

Key Issue: ENFORCEMENT OF AFFIRMATIVE ACTION

Title: "Hidden Handicaps"

Principal Author: Jane M. Nold

Source: Wisconsin Law Review, Vol. 1983, No. 3, 1983: 725-750

Accession: Library of Congress

Overview: The physically handicapped do not constitute the sole numbers of the disabled. Alcoholics, drug addicts, and the mentally ill constitute the "hidden handicapped." Because of the socially unacceptable behavior of these groups, they often face job discrimination. The author addresses protections under the Rehabilitation Act (Section 504) and the Wisconsin Fair Employment Act. This is followed by a discussion of the employee's burden of proof and permissible employer defenses. Lastly, the author addresses the scope of the employer's duty to accommodate "hidden handicaps" and offers suggestions for the employer on how to satisfy the reasonable accommodation standard of the law.

Major Findings/  
Conclusions: Whether an employer must, under the statutes involved, continually accommodate unacceptable behavior caused by a "hidden handicap" is unclear. Recent federal judicial decisions on Section 504 of the Rehabilitation Act show how difficult it is to determine the point at which alcoholism, drug addiction, or mental illness prevent an employee from performing the duties of the job in question, thus excluding the employee from the act's protection against discrimination. In Simpson v. Reynolds Metal Co. (1980), the Seventh Circuit Court of Appeals noted that individuals with current problems or histories of alcoholism or drug addiction qualify as "handicapped" unless their addiction or prior use can be shown to prevent successful performance of their jobs. The court found that the employee had standing as a handicapped individual because his employer did not show that alcoholism prevented successful job performance. The court indicated that proof of employee's unexcused absences exceeding allowable sick leave or other limitations for nonalcoholic workers would be sufficient proof of impaired job performance.

In Davis v. Bucker (1978), the court found that persons with histories of drug abuse, including present participation in methadone maintenance programs, are "handicapped" and protected by Section 504. The court dismissed arguments that Congress did not intend to include drug addicts as handicapped because (1) drug use is voluntary and (2) it is a criminal activity on the grounds that it is (a) a disease and (b) a matter of public policy. It is not surprising that Congress would wish to provide assistance for those who overcome their addiction and give support and incentive for those attempting to overcome it. The court further stipulated that a drug addict need not be given employment opportunity if he or she cannot successfully perform a job. In assessing performance, employers may consider past personnel records; absenteeism; disruptive, abusive, or dangerous behavior; violations of rules; and unsatisfactory work performance. The case did not indicate the extent to which Section 504 protects current drug addicts because the plaintiffs in the case were former drug users.

Under the Rehabilitation Act and the Fair Employment Act of Wisconsin, once the employee has demonstrated discrimination because of handicap, the employer has the responsibility to show that the employee is unqualified. Employers frequently rely on the future hazards exception to show that a handicapped employee is unqualified and therefore outside the statutory protections. Both federal and state courts have allowed this exception. [Doe v. New York University (1981); Chicago and N.W. Railroad v. Labor & Industrial Review Commission (1980)].

Although the regulations under the Rehabilitation Act do not deal with future hazard exception, the U.S. Supreme Court indicated in Southern Community College v. Davis (1979) that an employer may consider the safety risks posed by a handicapped employee in determining whether to employ that person.

For alcoholics, drug addicts, and the mentally ill, reasonable accommodations that may be required include scheduling changes to allow the employee to undergo therapy, extra rest periods to take medication, job restructuring or a transfer to reduce stress, and medical leave of absence for extended treatment.



One approach to clarify the point at which an employee is handicapped under the law would be to promulgate administrative guidelines requiring a medical diagnosis of the condition before he or she is considered handicapped. This requirement would channel the employee toward rehabilitation if medical referrals are required and would provide the employer with some of the information necessary to provide reasonable accommodation.

Keywords: Alcoholism and Employment; Drug Abuse and Employment; Mentally Handicapped; Rehabilitation; State Law; Reasonable Accommodation



Key Issue: ENFORCEMENT OF AFFIRMATIVE ACTION LAWS

Title: "Protecting the Handicapped from Employment Discrimination in Private Sector Employment: A Critical Analysis of Section 503 of the Rehabilitation Act of 1973."

Principal Author: Kevin O'Dea

Source: Tulane Law Review, Vol. 54, April 1980, 717-764.

Accession: Library of Congress

Overview: The article presents an overview of Section 503 and its regulations, focusing upon enforcement of the affirmative action requirements applicable to federal contractors. Particular attention is devoted to identifying the beneficiaries of the act and the impact of the employers' duty to undertake reasonable accommodation in employment of the handicapped.

Major Findings/  
Conclusions: The threshold question in determining the beneficiaries of 503 are: (1) whether the individual is handicapped and (2) whether that handicapped individual is qualified for the employment at issue. If the handicapped individual is initially found incapable of performing the job because of the handicap, the employer must make a second inquiry to ascertain whether any reasonable accommodation for the handicap can be implemented to remove the impediments to employment. Thus, the job relatedness of the employment criteria used by the employer and the nature of the accommodations he must undertake are the two central issues in determining whether a handicapped individual is "qualified" and thus protected under 503. The author also discusses an alternative approach to protecting handicap rights, i.e., protection under Title VII of the Civil Rights Act of 1964.

Keywords: Anti-Discrimination; Rehabilitation Act; Job Relatedness; Reasonable Accommodation; Civil Rights Act of 1964; Handicap Definition

Key Issue: ENFORCEMENT OF AFFIRMATIVE ACTION LAWS

Title: "Employment Discrimination Against the Handicapped:  
Can Trageser Repeal the Private Right of Action?"

Principal Author: Diane M. Paolicelli

Source: New York University Law Review, Vol. 54, December  
1979, 1173-1198.

Accession: Library of Congress

Overview: The article examines the continued vitality of  
Section 504 as a protection for the handicapped  
against employment discrimination.

Major Findings/  
Conclusions: The article concludes that the Fourth Circuit's  
application of the employment discrimination exception  
of Title VII of the Civil Rights Act to Section 504 of  
the Rehabilitation Act contravenes prior judicial,  
legislative, and administrative interpretations of  
Section 504 and frustrates the objective of the 1978  
amendments--to make available effective means of  
enforcing Section 504 rights.

Keywords: Anti-Discrimination; Rehabilitation Act; Equal  
Employment Opportunity; Civil Rights Act of 1964

Key Issue: ENFORCEMENT OF AFFIRMATIVE ACTION LAWS

Title: "Reasonable Accommodation for Handicapped Employees"

Principal Author: Peter C. Reid

Source: In Depth, A Confidential Memo to Management, August 10, 1984

Accession: Applied Management Sciences, Inc.

Overview: The brief article describes recent federal court crackdown on employers who failed to go far enough in accommodating handicapped employees. There are no definitive answers yet to what constitutes "reasonable accommodation" as this question is still being tested in federal courts. Recent court rulings suggest that courts expect employers to look for every possibility to make an accommodation before claiming undue hardship and before turning down a handicapped applicant or employee.

The author makes suggestions for modifying written examinations and worksites, adjusting work schedules, restructuring jobs, providing assistive devices, providing readers and interpreters, adopting flexible leave policies, reassigning and retraining employees and eliminating transportation barriers.

Major Findings/  
Conclusions: Recent cases involving the issue of reasonable accommodation include: Smith v. Administrator of Veterans Affairs, decided by the U.S. District Court of California and Nelson v. Thornburgh decided by U.S. District Court of Pennsylvania. Both cases found in favor of the handicapped.

Keywords: Job Requirements; Physical Modifications; Job Redesign; Reasonable Accommodation

Key Issue: ENFORCEMENT OF AFFIRMATIVE ACTION

Title: "Conflict: Equal Employment Versus Occupational Health"

Principal Author: N. G. Stillman

Source: SAM Advanced Management Journal, Vol. 46, No. 2, Spring 1981: 16-23

Overview: Equal employment and occupational health considerations can be conflicting. Placing handicapped persons, older workers, and women in potentially hazardous jobs raises many questions. Government regulation places a big responsibility on employers.

Major Findings/  
Conclusions: At the present time, an employee's desire to work at a specific job takes precedence over a potential health hazard.

Keywords: Equal Employment Opportunity; Occupational Safety

Key Issue: ENFORCEMENT OF AFFIRMATIVE ACTION

Title: "Class Procedure by the Handicapped in Employment Discrimination Cases"

Principal Author: Stacey Stutzman

Source: DePaul Law Review, Vol. 27, 1978: 1135-1167

Accession: U.S. Department of Labor Library

Overview: The purpose of this comment is to encourage attorneys to file class action suits on behalf of handicapped who have experienced employment discrimination. The commentary surveys the various remedies available to the discriminatee under federal and state law, discusses and compares the federal rule and state class action statutes, and then examines the individual requirements of the rules, focusing on the special problems they may present in handicap employment discrimination cases.

Major Findings/  
Conclusions: The author suggests that one should first consider the remedial laws available to the handicapped and then, should a choice exist, select the best forum in which the procedural law will be the most conducive to such an action.

Keywords: Discrimination; Due Process; State Law

Key Issue: EQUAL EMPLOYMENT OPPORTUNITY

Title: The Legal Rights of Handicapped Persons: Cases, Materials and Text, 1983 Supplement

Principal Author: Robert L. Burgdorf, Jr., Patrick P. Spicer

Source: Paul H. Brooks Publishing Co., 1984

Accession: George Washington University Library

Overview: This volume is a supplement to the casebook by the same name and presents judicial decisions and materials that have been forthcoming since the publication of the parent volume. The volume contains 12 chapters. Handicapped issues are those concerned with equal educational opportunity, employment (chapter 3), access to buildings and transportation systems, freedom of choice: competency and guardianship, freedom from residential confinement, etc. The volume also presents a table of cases in alpha order for easy reference.

Major Findings/  
Conclusions: Each chapter contains a summary of doctrinal developments and issues connected with the subject area. For example, employment issues raised by case law include:

Employment Criteria for Jobs: Issue of blanket exclusions and individuation in job eligibility determinations.

Reasonable Accommodation: Violation of employees rights through arbitrary job removal and reassignment.

Keywords: Reasonable Accommodation; Due Process; Blanket Exclusion

Key Issue: EQUAL EMPLOYMENT OPPORTUNITY

Title: "Equal Employment Opportunity and Its Implications for Personnel Practices"

Principal Author: William Holley, Hubert Field

Source: Labor Law Journal, Vol. 27, May 1976: 278-286

Accession: Library of Congress

Overview: The article discusses how court cases and administrative decisions are helping to clarify the meaning of personnel practices for equal employment opportunities.

Major Findings/  
Conclusions: Several studies concerning the impact of civil rights legislation on selected personnel practices have been conducted, but case law and administrative decisions in this area have been so dynamic that much has occurred since these studies. This article presents a review of the current legal status of some of the more pertinent personnel practices of organizations, both private and public.

Keywords: Personnel Practices

Key Issue: EQUAL EMPLOYMENT OPPORTUNITY

Title: "Protecting the Handicapped from Employment Discrimination: The Job-Relatedness and Bona Fide Occupational Qualification Doctrines"

Principal Author: Jonathan Lang

Source: DePaul Law Review, Vol. 27, 1978: 989-1012

Accession: U.S. Department of Labor Library

Overview: Equal employment opportunity is a right of handicapped individuals guaranteed to them by federal and state statutes and constitutional provisions. These rights need to be translated into effective remedies, a step that, for the most part, should be undertaken by the courts, and in some instances by administrative agencies. Implementation will require the formulation of specific standards to assist in distinguishing between discriminatory and justifiable employment rejections as a result of a handicapping condition. The author suggests the use of two standards. The first is the extent and the manner in which employers must show job-relatedness or validity of employment selection criteria that disproportionately exclude handicapped. The second standard (related to the first) is the scope of the bona fide occupational qualification (BFOQ) exception that may be used to justify practices that expressly exclude the handicapped.

The author discusses judicial interpretations of Title VII on the issues of job relatedness and BFOQ and how these lend themselves to application in the handicap field. In this way, the author shows how the substantive rights under the statutes and constitutional provisions protecting the handicapped from employment discrimination bear upon or subsume the job-relatedness and BFOQ doctrines. The article then continues to treat and compare the application of these two doctrines in recent handicap cases with the current state of Title VII law. Finally, the author makes his argument for applying Title VII standards to the handicap.

Major Findings/  
Conclusions: Although the approach taken in Title VII is not entirely applicable to handicapped employment discrimination, many of the principles developed under

Title VII are applicable and instructive as a starting point when confronted with job-relatedness and BFOQ issues.

Keywords:

Job Relatedness; Justifiable Rejection; Bona Fide Occupational Qualifications; Civil Rights Act of 1964



Key Issue: EQUAL EMPLOYMENT OPPORTUNITY

Title "The Discrimination Danger in Performance Appraisal."

Principal Author: Robert Lazer

Source: Conference Board Record, Vol. 13, March 1976: 60-64

Accession: U.S. Department of Labor Library

Overview: Over the last decade the federal government has focused increasing attention--judicially as well as legislatively--on the personnel practices of employers. With such laws as Title VII of the Civil Right Act of 1964, Executive Order 11246, the Equal Pay Act, etc., employers have to substantially rethink and modify their traditional practices. Any selection instrument used as a screening device for employment opportunity, and not just selection, may be viewed as an "employee selection procedure," and if it has an adverse impact on employment opportunities of any protected group, its use may need to be justified as a matter of business necessity following certain guidelines. These are the EEOC's "Guidelines on Employee Selection Procedures," and OFCC's "Order on Employee Testing and Other Selection Procedures."

Major Findings/  
Conclusions: Issues concerning the nature and administration of appraisal programs have been raised and decided in several court cases. At a minimum, companies need to check the appraisal programs and their applications for disparate impact on any groups protected by law. Companies may also need to establish that their appraisal systems have been carefully developed, are even-handedly administered and are valid measures of job performance. Recent research indicates the most firms are not yet in a position to justify their system(s) in these terms.

Keywords: Personnel Practices; Performance Appraisal; Civil Rights Act of 1964

Key Issue: EQUAL EMPLOYMENT OPPORTUNITY

Title: "Review Hiring for Handicap Bias"

Principal Author: Joseph M. Miller

Source: Business Insurance, Vol. 15, No. 7, February 16, 1981:  
72

Accession: Library of Congress

Overview: Attorney Miller cautions against handicapped discrimination in access to the employment office, medical questions, and idealized job descriptions.

Major Findings/  
Conclusions: Viewing workers compensation alone could result in liability under other federal and state laws.

Keywords: Discrimination; Liability

Key Issue: EQUAL EMPLOYMENT OPPORTUNITY

Title: The Law and Disabled People: Selected Federal and State Laws Affecting Employment and Certain Rights of People With Disabilities

Principal Author: The President's Committee on Employment of the Handicapped

Source: U.S. Government Printing Office, 1980.

Accession: George Washington University Library

Overview: This publication summarizes selected state and federal laws affecting opportunities for integration of handicapped persons into the mainstream. Laws relating to architectural accessibility, education, vocational education, vocational rehabilitation, mass transportation, use of motor vehicles, housing, non-discrimination in education and training, employment, housing, public accommodations, and transportation are viewed from the perspective of assisting the handicapped to become fully employed. Crucial judicial cases are identified, and a chapter is devoted to detailed charts, which analyze state law.

Major Findings/  
Conclusions: In looking at each of the identified areas of law, the publication asks:

- (1) What are the basic provisions of the law?
- (2) How are the laws enforced and who enforces them?
- (3) What are the important developments in each area of law?

Keywords: Affirmative Action; Anti-Discrimination; State Law

Key Issue: EQUAL EMPLOYMENT OPPORTUNITY

Title: "Civil Rights Issues of Handicapped Americans: Public Policy Implications"

Source: U.S. Commission on Civil Rights Conference Report, Vol. 5, 1980: 13-14

Accession: U.S. Department of Labor Library

Overview: This is a compendium of dialogue with selected authorities, advocates, consumers and practitioners who are considered experts regarding civil rights issues of the handicapped. The purpose of the conference was to inform the public of those barriers to employment opportunity that deny the disabled equal protection and opportunity under the law. The consultation was focused primarily on employment although discussion was also centered upon factors that deny the disabled the opportunity to be employed. These factors include: effective denial of equal access to places of residence, public accommodation, facilities and transportation.

Major Findings/  
Conclusions: Notable summaries on the rights of handicapped individuals are profiled in:

- "Equal Employment Opportunity for the Handicapped," Drew S. Days III, Assistant Attorney General for Civil Rights, U.S. Department of Justice
- "Out of Sight, Out of Mind, Out of Work: Barriers to Employment for Handicapped People," Mainstream, Inc.
- The compendium also contains select states' rights, e.g., Michigan, Minnesota, New York, and a summary of a survey report on employer attributes toward affirmative action conducted by Barnhill Hayes, Inc. Results are shown by questionnaire item.

Keywords: Discrimination; Equal Opportunity Employment; State Law

Key Issue: IMPLEMENTATION OF AFFIRMATIVE ACTION

Title: "Affirmative Action Toward Hiring Qualified Handicapped Individuals"

Principal Author: Russell Baker

Source: Southern California Law Review, Vol. 49, May 1976: 785-826

Accession: Library of Congress

Overview: The article argues that the affirmative action mandate of the Rehabilitation Act suggests the development of area-wide planning for employment of the handicapped by federal contractors. Area-wide planning is an approach already used to implement race affirmative action in the construction industry. Such planning should entail specific goals, timetables, and job-setting and job-task accommodations for each contractor in order to integrate handicapped individuals into the work force of federal contractors both effectively and efficiently.

Major Findings/  
Conclusions: The author concludes that OFCCP regulations, as they now stand, are inconsistent with area-wide planning, and attention should therefore be focused upon redrafting those regulations to encompass that planning concept.

Keywords: Affirmative Action; Area-Wide Planning Concept; Rehabilitation Act

Key Issue: IMPLEMENTATION OF AFFIRMATIVE ACTION

Title: Design and Implementation of Affirmative Action Programs for the Handicapped in Merit System Agencies

Principal Author: L. Brockman

Source: State Merit System Council, Austin, Texas, 1980

Accession: U.S. Office of Personnel Management, Office of Intergovernmental Personnel Programs, Contract Grant No. 80TX01C10

Overview: The recruitment and placement of handicapped persons is a central issue in affirmative action employment practices. The State Merit System in Texas was awarded a grant to study the design and implementation of an effective program. The study focused upon hiring practices and policies, selection and classification of handicapped persons, employee attitudes, and reasonable accommodation.

Major Findings/  
Conclusions: The design and implementation of an affirmative action program for the handicapped in merit system agencies is expected to increase opportunities for the handicapped in hiring and promotion; increase cooperation among rehabilitation agencies and the merit system agencies in recruitment and selection of handicapped persons; modify selection procedures and devices to remove artificial barriers; ameliorate prejudices of co-workers regarding handicapped employees; and establish a handicapped resource/referral program for merit system agencies.

Keywords: Personnel Practices; Recruitment and Placement

Key Issue: IMPLEMENTATION OF AFFIRMATIVE ACTION LAWS

Title: "Affirmative Action for the Handicapped"

Principal Author: Louis R. Decker, Daniel A. Peed

Source: Personnel, Vol. 53, May - June 1976: 64-69

Accession: Applied Management Sciences, Inc.

Overview: The Labor Department has simplified its rules for hiring disabled and handicapped workers. The objective is to open up new jobs without strapping employers in the red tape of compliance. Emphasis is placed on screening in applicants.

Major Findings/  
Conclusions: Section 503 complainants charge rejection because of (1) physical handicaps, thus employers should be prepared to show hard evidence that a particular handicap definitely prevents a person from handling certain jobs; (2) Physical appearance. Employers should clearly specify job requirements and validate them against physical characteristics, i.e., appearance or impression required for successful performance; (3) Tests and selection procedures. Considered by employment standards officials a can of worms, nevertheless, it may well be that employers will have to furnish convincing data that certain IQ levels, psychological traits, or specialized skills are really necessary for various jobs; (4) Lack of physical accommodations. The Department of Labor has spelled out the types of activities that should be included in an affirmative action program and stress that this is based on reasonable accommodation, not goals or timetables.

Keywords: Affirmative Action; Job Requirements; Reasonable Accommodation

**Key Issue:** IMPLEMENTATION OF AFFIRMATIVE ACTION

**Title:** "Hire the Handicapped - Compliance is Good for Business"

**Principal Author:** Pati C. Gopal, John I. Adkins, Jr.

**Source:** Harvard Business Review, Vol. 58, January - February 1980; 14-19

**Accession:** The George Washington University Library

**Overview:** The authors, citing statistics that 91 percent of companies do not comply with the requirements of affirmative action under the Rehabilitation Act of 1973<sup>1</sup>, provide information that can make compliance less difficult, and they illustrate, with examples from various corporations, possible methods of promoting affirmative action.

**Major Findings/Conclusions:** Three areas in which contractors tend not to be in compliance are: (1) hiring qualified handicapped persons, (2) using proper reasons for terminating them, and (3) promoting them or even considering them for promotion.

According to the law's broad definition of handicapped, there are about 600 medical conditions that have been identified to date. Even employers who want to uphold the law dislike many aspects of it:

- A law without specific goals and timetables may lead to litigation.
- Good employers with high visibility may be unfairly singled out because the failure of their counterparts to comply has made critics demand that someone be rebuked.
- The law has no teeth to attack unions that only give lip service to aiding the handicapped and are not compelled to do so.

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<sup>1</sup> U.S. Department of Labor random survey of 300 companies.

- Under the Social Security Disability Insurance Act, handicapped persons are paid a monthly stipend as long as they are unemployed. Once they return to full time employment, the stipend is discontinued, so that the handicapped people hired at minimum wage lose their benefits but immediately begin paying taxes—a disincentive to seek employment at low wages.

In terms of dealing with alcoholic employees, employers must make reasonable accommodation in terms of counseling, treatment, and rehabilitation of alcoholic employees. Employers are in general urged to update their personnel practices so that compliance reviews initiated by the Labor Department can go smoothly.

Keywords: Rehabilitation Act; Affirmative Action



Key Issue: IMPLEMENTATION OF AFFIRMATIVE ACTION

Title: Employing Handicapped Persons: Meeting EEO Obligations

Principal Author: Vendor Grossman

Source: Bureau of National Affairs, Inc., 1980.

Accession: George Washington University Library

Overview: The book is intended to help employers understand EEO requirements for employing handicapped persons, especially the implications of the requirements and how to respond to them correctly.

Major Findings/  
Conclusions: This handbook shows how employers can build handicapped persons into the entire personnel system on an individual basis, thus providing them the same opportunities others have to be considered in personnel activities, e.g., hiring, promotion, transfer and job training.

Keywords: Affirmative Action; Rehabilitation Act; Handbook; Reasonable Accommodation



Key Issue: IMPLEMENTATION OF AFFIRMATIVE ACTION

Title: Employment of the Handicapped

Principal Author: M.W. Iarocci

Source: New Rochelle City Government, 1980

Accession: U.S. Office of Personnel Management, Office of  
Intergovernmental Personnel Programs  
Contract Grant No. 80NY04

Overview: New Rochelle, New York wanted to develop a positive system to employ the handicapped by hiring two staff persons to analyze specific mental and physical requirements of each class of positions in the city, review architectural barriers which make city facilities inaccessible to physically disabled employees, change negative attitudes of supervisors through workshops and other activities, develop and coordinate employment training programs for the disabled, establish an outreach recruiting program and disseminate employment of the handicapped information to other local governments.

Major Findings/  
Conclusions: No conclusions are intended.

Keywords: Personnel Practices; In-Service Training; Job  
Relatedness



Key Issue: IMPLEMENTATION OF AFFIRMATIVE ACTION LAWS

Title: "Affirmative Action for the Handicapped and Veterans: Interpretative and Operational Guidelines"

Principal Author: Diane P. Jackson

Source: Labor Law Journal, Vol. 29, February 1978: 107-117.

Accession: Library of Congress

Overview: The article discusses the cost of accommodation of the handicapped in terms of three factors. These are: (1) amendment of the tax code provision for making a building accessible to the physically handicapped; (2) the scope of disabilities and handicaps to be accommodated under the acts; and (3) the limits of an employer's good faith efforts as interpreted by the courts. These and other questions are answered through an examination and comparison of the regulations for the Rehabilitation Act of 1973 (Section 503) and the Veteran's Readjustment Assistance Act of 1974.

Major Findings/  
Conclusions: In its efforts to reinforce affirmative action, the government dropped requirements for goals, timetables, and utilization (work force) analysis. In its place, the regulations call for the elimination of physical and systemic barriers to employment which have traditionally deterred the progress of otherwise qualified handicapped and disabled persons.

Physical accommodation has three major categories: facility modification; equipment modification; and job redesign. Rejection of an applicant or employee is unlawful unless the condition interferes with the person's ability to perform the job, even though the condition may involve future payroll risk. It has not yet been adequately defined by the courts, but rejection may be lawful if a condition creates a safety hazard, is communicable, or if a condition will be aggravated as a result of a job.

An alcoholic or drug abuser need not be rehabilitated to qualify for protection under the law. All medical documentation of physical and mental handicap, including physical examinations and documentation of handicap, will be based on AMA Guidelines to the Evaluation of Permanent Impairments.



Keywords: Affirmative Action; Reasonable Accommodation; Job Requirements; Physical and Systemic Barriers; Rehabilitation Act; Veteran's Readjustment Assistance Act of 1974



Key Issue: IMPLEMENTATION OF AFFIRMATIVE ACTION

Title: "Who is Handicapped? Defining the Protected Class Under the Employment Provisions of Title V of the Rehabilitation Act of 1973?"

Principal Author: Harriet M. Johnson

Source: Review of Public Personnel Administration, Vol. 2, No. 1, Fall 1981: 49-61

Assession: U.S. Department of Labor Library

Overview: One of the most problematic implementation issues under Title V is the definition of the protected class. The class referred to as "handicapped individuals" is an extremely heterogeneous one; consequently, it is difficult to define operationally. The author examines the problems involved with using handicap as a basis for classification under a civil rights law.

Major Findings/  
Conclusions: The definition of "handicapped" cited in U.S. HEW, Office of Secretary, 1977: 22678, is not framed in diagnostic or even exclusively functional terms. The statutory definition is intended to protect people from discrimination regardless of whether they have or have had a functional impairment. The term "handicap" is partially defined as a product of perception, attitudes, and social interaction. Gitler (1978) points out that the 3-part definition recognizes that distinctions between perceived and real handicaps are often artificial and formalistic. Likewise, Gitler notes that the definition addresses neither the origin nor the duration of the handicapping impairment. Although policymakers might want to protect only those with involuntary and permanent impairments, such distinctions are often impossible to draw. The class was defined broadly to include all who might be discriminated against on the basis of handicap. The fact of discrimination is regarded as a more sound basis for classification than a precise description of the impairment would be. In 1978, the Rehabilitation Act was amended (U.S. Congress, 1978) specifically to exclude alcoholics and drug addicts from Title V protection when such characteristics affect safety or constitute bona fide occupational qualifications.

Keywords: Handicap Definition; Discrimination; Rehabilitation Act; Bona Fide Occupational Qualifications; Alcoholism and Employment; Drug Abuse and Employment

Key Issue: IMPLEMENTATION OF AFFIRMATIVE ACTION

Title: National Civil Rights Policy for Handicapped Individuals and the Role of the Rehabilitation Counselor

Principal Author: A. Jones

Source: West Virginia University, Vocational Rehabilitation Research and Training Center, 1981

Accession: U.S. Department of Education, National Institute of Handicapped Research

Overview: The following objectives were central to this research project and reflected in a survey questionnaire: (1) general awareness of civil rights/affirmative action; (2) types of activities practiced by counselors in civil rights and affirmative action for handicapped people; (3) the role perception of counselors with regard to affirmative action in their job function; (4) the awareness and practices of field services central office supervisors with regard to affirmative action activities of VR counselors; and (5) role perceptions of VR central field offices concerning VR counselors.

Major Findings/  
Conclusions: The study permitted generalizations about the civil rights/affirmative action activities included in counselor functions and perceptions.

Keywords: Affirmative Action; Rehabilitation

Key Issue: IMPLEMENTATION OF AFFIRMATIVE ACTION

Title: Training on How to Implement the Compliance Requirements of the Rehabilitation Act of 1973

Principal Author: A.A. Lytle

Source: U.S. Office of Personnel Management, Office of Intergovernment Personnel Programs, 1981

Accession: State and Consumer Services Agency  
Sacramento, California

Overview: The study provided training to various California State departments to help them implement a program in support of the Rehabilitation Act of 1973 and the national commitment to end discrimination on the basis of disability. The state, using in-house personnel, provided six, 2-day training sessions with 50-75 participants at each session. The training covered five areas: (1) orientation and background to the Act; (2) workshop on section 504; (3) workshop on section 502 (Architectural Barriers Act of 1968; (4) workshop on section 503; and (5) California State AB 803 (1978).

Major Findings/  
Conclusions: No conclusions are intended.

Keywords: In-Service Training; Monitoring and Compliance; Affirmative Action; State Law

Key Issue: IMPLEMENTATION OF AFFIRMATIVE ACTION

Title: Development of an Affirmative Action Program for Job Placement of the Severely Handicapped

Principal Author: J.D. Miller

Source: Amalgamated Clothing and Textile Workers Union, 1979

Accession: U.S. Department of Health and Human Services, Rehabilitation Services Administration

Overview: The study sought to research and develop a prototype plan for the role of the labor union in an affirmative action program for the severely disabled. This project was part of a three-year effort conducted in coordination with two similar projects; namely, one exploring the role of a chamber of commerce and the other the role of a state office of vocational rehabilitation.

Major Findings/  
Conclusions: The first year of effort was devoted to needs assessment, including: determination of existing union policies and guidelines relating to affirmative action, exploration of union programs relating to the disabled, a determination of problems encountered in meeting existing or anticipated affirmative action plans, policies and guidelines.

The second year, the study attempted to delineate a plan for the role of the union in affirmative action and a testing out to determine the feasibility of this plan.

In the third year, a model(s) for union participation was developed and evaluated.

Keywords: Labor Relations; Model Simulation; Recruitment and Placement

Key Issue: IMPLEMENTATION OF AFFIRMATIVE ACTION

Title: "Responsibilities and Benefits in Hiring the Handicapped"

Principal Author: J.A. Schapire, F. Berger

Source: Cornell Hotel and Restaurant Administration Quarterly,  
Vol. 24, No. 4, February 1984: 58-67.

Accession: Cornell University Library

Overview: Federal laws now require that affirmative action be taken in the hiring of the handicapped. It is the responsibility of the employer to seek out, employ and promote handicapped persons. "Reasonable accomodations" must be made in the forms of making facilities accessable and/or modifying jobs and schedules.

Major Findings/  
Conclusions: The hiring of handicapped workers can benefit the hospitality industry, which is consistently plagued with turnover problems. As a group, handicapped workers tend to be loyal and dependable. Government training grants can help to reduce training expenses.

Keywords: Equal Employment Opportunity; Hotel and Motel Industry

Key Issue: IMPLEMENTATION OF AFFIRMATIVE ACTION

Title: Employing the Handicapped

Principal Author: Arno B. Zimmer

Source: American Management Association, 1981.

Accession: Howard County Public Library

Overview: The 1973 Rehabilitation Act and Executive Order No. 11246, administered by OFCCP began the legislation forbidding discrimination of the handicapped. Since then, new state and federal regulations have dealt with this problem. The text explains those regulations and the affirmative action programs as well as employer insurance liability.

Major Findings/  
Conclusions: This is a handbook; sample forms from OFCCP are shown. Who are the handicapped, what is their work record, what dimensions are necessary for access, and where to go for help are all discussed.

Keywords: Rehabilitation; State Law; Employer's Liability Insurance; Equal Employment Opportunity; Handbook; Personnel Practices

Key Issue: JOB BEHAVIOR

Title: "A Comparison of Employer Attitudes Toward the Worker Problems of Eight Types of Disabled Workers"

Principal Author: Dale Fuqua, Michael Rathbien, Eldon Gade

Source: Journal of Applied Rehabilitation Counseling, Vol. 15, No. 1, Spring 1984: 40-43.

Accession: The George Washington University Library

Overview: A random sample of eighty employers representing a wide range of area businesses in an upper great plains state were surveyed. The purpose of the study was threefold: (a) to determine if there are differences in employers' attitudes among the types of disabled for each of the worker problem areas, (b) to determine what problem areas are considered most serious and (c) to find out which types of disabled workers employers are most concerned about.

Major Findings/  
Conclusions: Employer attitudes toward the work traits of eight types of disabled workers were variable. There were significant differences in attitudes toward the specific groups on eleven of the twelve work traits. The blind and mentally retarded person would encounter the greatest employer discrimination while more favorable attitudes were shown toward hiring epileptics and amputees. Across all types of disabilities, the greatest concerns were lower work productivity, higher accident and workman compensation rates. The differential ratings have implications for placement strategies.

Keywords: Social Survey; Attitudes; Employee Behavior

Key Issue: JOB BEHAVIOR

Title: "Employers' Attitudes Toward Hiring Epileptics"

Principal Author: D. Holmes, J. McWilliams

Source: Journal of Rehabilitation, Vol. 47, No. 2, 1981:  
20-21, 81.

Accession: The George Washington University Library

Overview: A questionnaire with 10 attitude questions was mailed to 250 employees within a 5-county area of Middle Tennessee. Employers were factory or product oriented who had 10 or more employees on their payroll; 46 percent responded.

Major Findings/  
Conclusions: Even though the majority of respondents indicated a knowledge of the disorder only 15% employ epileptics. This points up the fact that more work needs to be done to increase the employment rate of epileptics. Further, more research is needed to identify and/or to verify specific needs in order to help alleviate the problem.

Keywords: Social Survey; Attitudes; Epilepsy

Key Issue: JOB BEHAVIOR

Title: "Disabled Workers Are No Handicap to Business"

Principal Author: W. Kroger

Source: Nation's Business, Vol. 67, No. 5, May 1979: 110-114

Accession: Library of Congress

Overview: Most disabled want employment, and employers should make greater efforts to hire them.

Major Findings/  
Conclusions: Handicapped employees have been found to have less absenteeism, greater productivity, and remain on the job longer than others. Education and training for these persons is costly but, with more employed, the overall cost would be less.

Keywords: Absenteeism; Affirmative Action; Employee Behavior; Job Performance; Productivity; Turnover

Key Issue: JOB BEHAVIOR

Title: "Disabled and Nondisabled Persons' Satisfaction with Conditions in the World of Work Before and After the Rehabilitation Act of 1973."

Principal Author: Stanford E. Rubin, Charles E. Worth, William G. Emener

Source: Rehabilitation Literature, Vol. 42, May - June 1981, 138-142.

Accession: The George Washington University Library

Overview: Questionnaires, designed to discern satisfaction with five conditions of the workplace for the years 1968 to 1973 and 1974 to 1979, were returned by both a disabled and nondisabled sample.

Major Findings/  
Conclusions: Survey results indicate that it would be difficult to suggest that the Rehabilitation Act of 1973 has had a significant effect on disabled members of the labor force. Other findings and overall results suggest that possibly disabled individuals are being somewhat protected from the effects of an economic decline by the affirmative action legislation.

Keywords: Social Survey; Rehabilitation Act; Job Satisfaction; Affirmative Action

Issue: JOB REDESIGN

Title: Rearranged Work Schedules for Handicapped Employees in the Private Sector

Principal Author: James Fast, Jr., Ruth Sablowsky, Patricia Armijo

Source: Employment and Training Administration, Office of Research and Development, July 31, 1978

Accession: National Technical Information Service Report No. DLETA-20-51-77-37-1

Overview: A survey was conducted of handicapped and nonhandicapped employees in a corporate environment to test the hypotheses that flex time improves job satisfaction and performance.

Major Findings/  
Conclusions: The findings of the survey environment overwhelmingly support theories that flexible work hours improve employees perceived quality of work, leisure, and family life. Careful study of all the data also demonstrates a proportionately higher level of satisfaction with flexible work hours for other persons with special needs. These conditions include not only conditions requiring medical attention or rest but also child care, continuing education and other personal requirements. The ability to use rearranged work schedules promotes job satisfaction for all employees and, to a greater extent, for handicapped employees. The authors conclude that rearranged work schedules can provide corporations with the opportunity to hire and maintain handicapped individuals in employment, thus enabling them to comply with federal regulations for affirmative action.

Keywords: Flextime; Personnel Practices; Affirmative Action

**Key Issue:** JOB REDESIGN

**Title:** Human Engineering Factors Related to Disabilities--Use in Vocational Rehabilitation

**Principal Author:** K. Mallik, J.L. Mueller

**Source:** George Washington University, Medical Rehabilitation Research and Training Center, February 1984

**Accession:** U.S. Department of Health and Human Services, National Institute of Handicapped Research

**Overview:** Many counselors and employers do not want to place the severely disabled. This study attempted through a review of literature; consultation with consumers, designers, educators, employers, engineers, and rehabilitation specialists; and a survey of users (divided into control and study groups) to develop information useful to accommodating the disabled.

**Major Findings/Conclusions:** Through Job Development Laboratory experiences with severe disabilities, some major barriers to vocational rehabilitation for disabled persons have been revealed: (1) Rehabilitation counselors are unable to visualize possible worksite modifications which could make employment possible for functionally limited clients; (2) employers are resistant to hiring disabled workers due to a fear of cost and complexity of environmental modifications; (3) manufacturers of products (which must be modified for disabled users) are ignorant of the human factors of disabilities which could help in designing products needing few, if any, modifications. Information to fill these needs is sparse and extremely difficult to access. Consequently, many counselors and employers do not want to place the severely disabled person. Manufacturers continue to produce products which cannot be used by these people without costly, extensive customizing.

**Keywords:** Design of Equipment Evaluation/Measurement

Key Issue: JOB REDESIGN

Title: Remote Employment of the Physically Handicapped

Principal Author: Multisystems, Inc.

Source: National Science Foundation; Applied and Research Applications, May 1978

Accession: National Technical Information Service, NSF/RA-780199

Overview: This report is directed to the overall feasibility of employing physically handicapped people in their homes. The concept of home employment is an attempt to solve an often-cited and long-recognized societal problem in significant new ways using telecommunications. The handicapped employee would have a computer terminal at home which would be used to perform work on a computer located at the employer's place of business or elsewhere. Ordinary telephone lines can be used for data telecommunications. An analysis of costs and benefits of the technology is given and problems with remote employment are discussed.

Major Findings/  
Conclusions: Through telecommunications, large numbers of permanently and temporarily disabled people could potentially be employed. Existing computer technology is adequate to support this type of employment and is available at reasonable cost.

Keywords: Computer Programming; Specialized Training; Productivity

Key Issue: JOB REDESIGN

Title: "Employment of the Handicapped: Concerns for the Industrial Engineer"

Principal Author: L. K. Volin

Source: American Institute of Industrial Engineers (AIIE) Proceedings, 1982 Conference, May 23-27, 1982: 194-198

Accession: AIIE, Norcross, Georgia

Overview: The industrial engineer plays a crucial role in expanding job opportunities for the handicapped. Specific factors involved in the placement of the physically handicapped are outlined.

Major Findings/  
Conclusions: Reasonable accommodation is explained in terms of accessibility of the plant and facilities, safety, insurance, job modification, and emergency evacuation. The advantages to both the employer and the employee are cited. Affirmative action and anti-discrimination legislation with which the industrial engineer should be familiar are explained. A list of rehabilitation engineering centers and research programs, including addresses and telephone numbers, is provided.

Keywords: Job Redesign; Affirmative Action, Reasonable Accommodation

Key Issue: JOB REQUIREMENTS

Title: "The Ergonomic Approach for the Design of Preemployment Selection Programs"

Principal Author: M. A. Ayoub

Source: American Institute of Industrial Engineers (AIIE)  
Proceedings, Spring Annual Conference, Spring 1980:  
494-499

Accession: AIIE, Norcross, Georgia

Overview: A preemployment screening program is designed to determine physiological and physical work capacity. The program consists of strength testing, step testing, and job demand. Man's safety, well-being, and suitability to a job is a prime factor in productivity.

Major Findings/  
Conclusions: With the addition of women, minorities, and the handicapped, an employer must justify his/her hiring policies under the Equal Employment Opportunity Act. The screening program fulfills legal requirements.

Keywords: Testing; Productivity; Equal Employment Opportunity

Key Issue: JOB REQUIREMENTS

Title: "Employability of Cancer Patients"

Principal Author: M.B. Bond

Source: Rocky Mountain Medical Journal, Vol. 74, No. 3, June 1977:  
153-156

Accession: National Institute of Occupational Safety and Health

Overview: The report addresses the occurrence of cancer and the employment status in a population of 763,256 employees in Bell System telephone companies throughout the U.S. for a 12-month period, July 1974 to June 1975.

Major Findings/  
Conclusions: Cancer was diagnosed at a frequency rate of 2.11 cases per 1,000 employees during a one-year period. The rate of females was 2.57 and for males, 1.64. Cancer in males ranked 14th and in females 15th in frequency of disability cases lasting more than a week. However, the average length of disability in cancer was 93.3 days for men and 108.3 days for women, which is greater by one-third than that for any other cause.

Most employees with a cancer disability return to work--70.6 percent of the men and 78.8 percent of the women. Death occurred in 23.4 percent of men and 13.7 percent of women. The lung and bronchus were the most frequent cancer sites in men; the breast in women. More than 85 percent of such employees returned to work, indicating slow progression and/or effectiveness of therapy. For cancer patients returning to work, there are in the Bell System no problems in maintaining them at work.

Keywords: Absenteeism; Incapacitation

Key Issue: JOB REQUIREMENTS

Title: Video Merit Testing for the Hearing-Handicapped Applicant

Principal Author: E. Fowler

Source: State Division of Recruitment and Examination, Frankfurt, Kentucky, 1980

Accession: U.S. Office of Personnel Management, Office of Intergovernmental Personnel Programs; Contract Grant No. 80KY01C06

Overview: To provide equal employment opportunity for hearing-impaired applicants for Kentucky state jobs at the initial testing stage, the state department of personnel sought IPA funds to purchase video equipment for producing and showing state merit exams for job classes in which low-level reading skills do not significantly limit work performance.

Major Findings/  
Conclusions: The project demonstrates how to remove testing barriers to deaf and hearing-impaired applicants by making reasonable accommodation in the test format without compromising the integrity and validity of the tests.

Keywords: Testing; Affirmative Action

Key Issue:           JOB REQUIREMENTS

Title:                "Safety and the Handicapped Worker"

Principal Author:   A.W. Motley

Source:              Safety Standards, Vol. 11, No. 6, December 1962: 8-12

Accession:           National Institute of Occupational Safety and Health

Overview:           The author contends that safety precautions for physically handicapped workers need not be materially different from those that comprise a good accident prevention program for workers in general. Safety measures extend beyond machine guarding and good housekeeping to good personnel practices, specifically ensuring a worker's physical ability to perform the job requirements. The American Standards Specifications for Making Buildings and Facilities Accessible to, and usable by, the Physically Handicapped is referred to as a blueprint. The safety risk is hiring in also discussed.

Major Findings/  
Conclusions:

Some firms have found that people with physical disabilities are more safety conscious than other employees, and the disadvantaged workers usually have better safety records. "Compensating" factors are discussed such as a handicapped person's acquiring a sensory or physical ability greater than average.

These compensatory skills may allow the worker to perform some jobs much better than many nonhandicapped persons. Proper placement of the handicapped should be followed by checking up on the placement to determine how he or she is adjusting to the job. The handicapped worker needs the same intelligent supervision as the nonhandicapped, from instruction to the handling of grievances and suggestions; throughout the handicapped person's employment, care must be taken that he does not cause harm to himself, does not create a hazard to other workers, and that other workers do not create hazards for him. Safety education is the key. All employees must be alert to the few but important special elements involved in assuring the safety of handicapped workers. Among these things are: the buildings in which people work, layout and arrangement, machinery and equipment,

toolrooms, locker rooms, cafeterias, lunchrooms, toilets and washrooms, and the arrangement of the individual's workplace.

**Keywords:** Occupational Safety; Physically Handicapped;  
Reasonable Accommodation



Key Issue: JOB REQUIREMENTS

Title: "Cardiac at Work: Practical Aspects of Heart Disease on the Job"

Principal Author: E.R. Plunkett

Source: Health and Safety, Vol. 43, No. 5, October 1974: 20-22

Accession: National Institute of Occupational Safety and Health

Overview: The return of the cardiac patient to work is discussed in terms of employment standards, affirmative action in employing qualified handicapped workers, hazards for heart patients, the role of the family doctor, and avoiding difficulties with unions.

Major Findings/  
Conclusions: Hazards for heart patients are cited as myocardial depressants, irritants, vasodilators, toxic gases, cholinesterase inhibitors, pneumoconiotic agents, heat, cold, and electrical effects on pacemakers.

Keywords: Personnel Practices; Occupational Safety; Medical Employment Standards

Key Issue: JOB REQUIREMENTS

Title: "Medical Standards for Hiring the Handicapped"

Principal Author: Peter C. Reid

Source: In Depth, A Confidential Memo to Management, July 10, 1983

Accession: George Washington University Library

Overview: The article discusses the interface between job requirements and medical standards for hiring employees to avoid handicap bias charges. Suggestions are made about adequate job descriptions in terms of physical requirements and essential and nonessential job functions.

Major Findings/  
Conclusions: OFCCP regulations require affirmative action to "screen in" handicapped applicants, not to screen them out. Most handicap complaints lodged by the OFCCP against federal contractors allege company discrimination by using inappropriate medical employment standards. To avoid charges, employers are urged to develop valid medical standards for specific jobs. Blanket medical standards that result in eliminating handicapped applicants who are capable of doing the job are unlawful.

Keywords: Blanket Exclusion; Job Descriptions; Medical Employment Standards

**Key Issue:** JOB REQUIREMENTS

**Title:** Accommodation Project for Physically Restricted Personnel Phase I: Job-Based Criteria

**Principal Author:** L.L. Young, P.B. Mossman

**Source:** U.S. Department of Energy, August 1982

**Accession:** National Technical Information Service

**Overview:** This study was designed to establish physical and mental requirements for various jobs for persons having physical limitations or restrictions. The entire spectrum of physical activity was analyzed for two jobs, those of custodian and mail carrier. Physical and ergonomic aspects of tasks as performed by custodians and mail carriers were tabulated. Time/task and percent time analyses were also performed for each job.

**Major Findings/  
Conclusions:** Recommendations are made concerning the approximate range in which an organization could accommodate physically restricted employees without jeopardizing the health and/or safety of any employee.

**Keywords:** Occupational Safety; Human Factors Engineering

Key Issue: JOB REQUIREMENTS

Title: Analyzing Performance Competencies of Severely Handicapped Clients

Principal Author: R.T. Walls

Source: West Virginia University, Vocational Rehabilitation Research and Training Center, 1980

Accession: U.S. Department of Education, National Institute of Handicapped Research

Overview: The overall purpose and objective of the study was to determine skills that the handicapped needed to learn to be placed in and to survive in competitive employment. In an attempt to determine the number of behavior checklists available and in use, an advertisement was placed in several periodicals requesting "... behavior checklist used in tabulating behaviors of skills" of various populations. The same request was sent to a number of individuals as well as to 883 state schools and rehabilitation facilities. More than 200 checklists were returned.

Major Findings/  
Conclusions: The lists varied widely in the extent to which they carefully represented specified and observable behaviors. Further, the item formats and scoring requirements differed markedly. In addition, while some were concerned with only one or two classes of behavior, others included behaviors of 15 or more classes. Some classes of behavior commonly represented in these lists were: eating, toileting, health, grooming, communication, mobility, dexterity, orientation, motor skills, self-help, alcohol or drug use, and work skills. All the items related to the assessment of vocational behaviors were reviewed and evaluated.

Keywords: Testing; Rehabilitation

**Key Issue:** JOB REQUIREMENTS

**Title:** "Delayed Effects of Acute Alcoholic Intoxication on Performance with Reference to Work Safety"

**Principal Author:** Robert C. Wolkenberg, Calman Gold, Erwin R. Tichauer

**Source:** Journal of Safety Research, Vol. 7, No. 3, September 1975: 104-117

**Accession:** U.S. Department of Labor Library

**Overview:** An investigation was undertaken of the aftereffects of alcohol in a simulated industrial work situation. Nine male subjects were administered a series of tests that took place before, during, and after an evening of social drinking; the test periods were designated (1) sober, (2) peak intoxication, (3) morning-after, and (4) afternoon-after. Each subject participated in three test sessions over a 2-week period. The apparatus used in testing were an eye/hand coordination device simulating motions commonly required in industry, a task board requiring precise object positioning within a normal industrial reach area, and a lordosimeter used to test changes in spinal configuration during performance of a static load-holding task. Subjects were also given a questionnaire that measured subjective mood.

**Major Findings/Conclusions:** On the basis of the experimental results, it appears that the motion patterns of individuals in industrial work situations remain drastically changed for several hours after blood alcohol levels have returned to zero, and the individual is legally sober.

The concept of safe performance implies that an individual behaves in an expected manner, using motion patterns purposefully designed into the work situation. Where motions are unexpectedly different, potentially hazardous situations may occur. The changes observed in the study make it advisable to conduct further research on the aftereffects of alcohol and other common medications and their potential influence on worker performance and occupational safety.

**Keywords:** Occupational Safety; Job Performance; Alcoholism and Employment



Key Issue: PERSONNEL PRACTICES

Title: Federal Employment of Handicapped People

Principal Author: General Accounting Office

Source: General Accounting Office; Federal Personnel and Compensation Division, July 6, 1978

Accession: Report No. FPCD-78-40; National Technical Information Service; General Accounting Office

Overview: This report reviews federal employment opportunities for handicapped individuals. It discusses both improvements in the federal employment picture since the 1974 report and problems that remain.

Major Findings/  
Conclusions: The report suggests possible legislative actions and recommendations to the Equal Employment Opportunity Commission which, under the recently accepted Reorganization Plan No. 1, will have responsibility for enforcement and related functions of programs for handicapped individuals.

Keywords: Discrimination; Attitudes; Personnel Practices

Key Issue: PERSONNEL PRACTICES

Title: Survey of Employers' Practices and Policies in the Hiring of Physically Impaired Workers

Principal Author: Abram J. Jaffe, Dorly D. Wang

Source: U.S. Office of Vocational Rehabilitation, Department of HEW, May 1959

Accession: U.S. Department of Labor Library

Overview: The study concentrated on the practices and policies of employers and firms with respect to the hiring--or not hiring--of employable, partially disabled persons.

- o Under what circumstances are the disabled hired and under what circumstances are they rejected?
- o Are employers more willing to hire some types of disabled persons and less willing to employ others?
- o What factors lead to the acceptance or rejection of handicapped workers?

The survey was restricted to private firms located in New York City. It consisted of interviews with personnel directors or other personnel representatives of management. Excluded were construction and heavy manufacturing and transportation, the latter because of legal health requirements. Industries included were miscellaneous light manufacturing, apparel, printing and publishing, wholesale trade, retail trade, finance and insurance, hotel and amusement. The body of the report deals with firms having 200 and more employees. Five disabilities were covered: cardiac, orthopedic, epileptic, cerebral palsy, vision.

Major Findings/  
Conclusions:

1. Formal written policies and practices, as regards the hiring of handicapped workers, are practically non-existent.
2. Every firm, whether it has formal written policies or not, has practices based on some medical standards, business and personal attitudes, which guide hiring decisions.

3. Hiring practices in the great majority of all firms are decentralized.
4. Most respondents had employees with cardio or orthopedic conditions. About one-half had epileptics, very few had workers with cerebral palsy or serious visual problems.
5. Statistics are reported for the number of firms knowingly hiring disabled applicants.
6. The survey showed a tendency for firms which have had experiences with handicappers to report a relatively more favorable "operational policy" toward hiring them.
7. Orthopedics are the least unacceptable group followed closely by cardiacs.
8. Pre-employment physical exams are required from the majority of applicants for non-supervisory positions.
9. There is a high correlation between a firm having a medical department and the requirement that job applicants have physicals.
10. The physician is influential in setting operational policy for the firm.
11. The physician does not seem to be a decisive element in management's hiring attitude.
12. Although a variety of cost factors were advanced as reasons against hiring, no single or group of reasons was found to be of overwhelming influence against hiring.
13. Over one third of respondents believe the disabled are less likely to abuse sick leave.
14. Six in ten respondents believe that the handicapped are less likely to quit.

**Keywords:**

Social Survey; Attitudes; Personnel Practices

Key Issue: PERSONNEL PRACTICES

Title: American Profile: What States are Doing (and Can Do) to Hire the Handicapped

Source: President's Committee on Employment of the Handicapped, 1975

Accession: U.S. Department of Labor Library

Overview: The booklet is designed to assist state officials to establish rules, regulations, and policies that would allow the handicapped to maintain equal employment opportunities. The study is based on a nationwide survey that points out strengths and weaknesses of state handicapped hiring policies.

Major Findings/  
Conclusions: The study presents responses to the following summary of questions:

- Does your state have a civil service or merit system plan?
- Has the governor issued a written statement supporting hiring of the handicapped?
- Does the state personnel manual have a written policy employment of the handicapped?
- Does the state provide for temporary direct appointments for the handicapped?
- Does the state offer special appointments of the handicapped in lieu of regular testing?
- Are appointments to some specific jobs reserved for those with specific handicaps?
- Do you have a program of retention and reassignment for those handicapped on the job?
- Does your state have agency coordinators to promote employment of the handicapped?
- Do you offer training for supervisors in how to deal with handicapped employees?

- Are there special testing arrangements for the handicapped who cannot take regular tests?

Keywords:

State Law; Equal Employment Opportunity



Key Issue: RIGHT OF ACTION

Title: "Toward Equal Rights for Handicapped Individuals: Judicial Enforcement of Section 504 of the Rehabilitation Act of 1973"

Principal Author: Catherine Adams

Source: Ohio State Law Journal, Vol. 38, No. 3, 1977: 677-708

Accession: Library of Congress

Overview: The articles describes the conflicting and superficial treatment of "private right of action" under Section 504 by the federal judiciary. Even those courts that have granted the relief have not disclosed the reasons behind their holdings. The text of Section 504 itself is silent concerning whether 504 confers a private right to sue for its enforcement, it merely proscribes discrimination on the basis of handicap. Nor do the regulations of the Secretary of HEW address the problem. The Secretary's analysis accompanying the final regulations correctly recognizes that to confer a right to sue under 504 is beyond the authority of the executive branch of government.

The author discusses the doctrine of implication and how it is interpreted by the courts in its treatment of private right of action. Prior to the Cort vs. Ash decision in 1975, conflicting policies and standards had been applied to determine when the implication of a private action was warranted. Cort established four criteria that, taken together, were apparently intended to resolve the issue of implication in any particular case. Cort was expected to have established a uniform, nationwide doctrine that would put an end to the implication doctrine's history of conflicting standards and unpredictable applications. It hasn't done so. Several lower courts have adopted the criteria set out in Cort; others have ignored them, and at least one has fused its own standards with those of Cort. At the very least, the Cort test must be recognized as a definitive statement that the Burger Court will tolerate fewer implied actions.

In a challenge to Cort, Lloyd vs. the Regional Transportation Authority and the Chicago Transit Authority, the judge found that Section 504 creates affirmative rights in favor of handicapped individuals because the language of Section 601 of the Civil

Rights Act of 1964 is nearly identical to 504. In so doing the judge found that the underlying purpose of the Rehabilitation Act would be served by allowing the implication of a private cause of action under 504 after exhaustion of administrative remedies.

Major Findings/  
Conclusions:

The author concludes that although Lloyd is a valuable decision, the narrow basis which supports its holding, i.e., the heavy reliance on administrative regulations, threatens Lloyd's endurance as an accepted legal principle. The narrow Lloyd reasoning is, moreover, inapplicable to other conceivable statutes under which no administrative enforcement has been undertaken. An application of the Cort test will determine whether a private cause of action can be inferred from the statutory section alone.

Keywords:

Rehabilitation Act; Right of Action; Doctrine of Implication

Key Issue: RIGHT OF ACTION

Title: "The Rehabilitation Act of 1973: Is There an Implied Right of Action Under Section 504?"

Principal Author: Brian H. Trammell

Source: Tennessee Law Review, Vol. 49, Spring 1982, 577-593.

Accession: Library of Congress

Overview: The author discusses administrative remedies available for the enforcement of Section 504 (since the 1978 amendments to the Rehabilitation Act) and how they do not work.

Major Findings/  
Conclusions: The article concludes that an analysis of all the factors relevant to determining whether there is a private right of action implied by Section 504 of the Rehabilitation Act of 1973 clearly indicates that the Supreme Court should hold that such a right is implied. The overriding policy concerns, the congressional intent, the Court's standards articulated in Court, the relevant case law, and practical implementation of the act indicate that a private right should be found.

Keywords: Anti-Discrimination; Rehabilitation Act; Right of Action

Key Issue: SECTION 504: ANTI-DISCRIMINATION PROVISIONS

Title: "Nondiscrimination in Employment under the Rehabilitation Act of 1973."

Principal Author: Timothy M. Cook

Source: American University Law Review, Vol. 27, Fall 1977, 31-75.

Accession: Library of Congress

Overview: The article examines the Rehabilitation Act with a special emphasis on Section 504, which prohibits discrimination by recipients of federal financial assistance.

Major Findings/  
Conclusions: There are several provisions of the 504 regulations that significantly restrict the impact of the statute. The restrictions illustrate HEW's failure to interpret 504 consistently with the Congressional intent to integrate disabled individuals into all facets of the nation's economy. There may be a need for judicial intervention to extend the mandates of the regulation to implement fully Section 504.

Keywords: Discrimination; Equal Employment Opportunity; Rehabilitation Act

Key Issue: SECTION 504: ANTI-DISCRIMINATION PROVISIONS

Title: "Mending the Rehabilitation Act of 1973."

Principal Author: Steven W. George

Source: University of Illinois Law Review, Vol. 1982, No. 3, 1982, 701-730

Accession: Library of Congress

Overview: The article examines the problem of discrimination against the handicapped and the solution brought by the Rehabilitation Act.

Major Findings/  
Conclusions: By analyzing recent inconsistent decisions interpreting Section 504, the article demonstrates the need for precise statutory standards, which more clearly reflect congressional intent in passing the act. The article concludes by suggesting amendments to Section 504 that would impose an express obligation on recipients of federal funds to make affirmative efforts to accommodate the handicapped.

Keywords: Anti-Discrimination; Rehabilitation Act; Affirmative Action; Reasonable Accommodation

Key Issue: SECTION 504: ANTI-DISCRIMINATION PROVISIONS

Title: "Accommodating the Handicapped: The Meaning of Discrimination Under Section 504 of the Rehabilitation Act."

Principal Author: Mark E. Martin

Source: New York University Law Review, Vol. 55, No. 5, November 1980, 881-906.

Accession: Library of Congress

Overview: The article begins by indicating the distinctive aspect of prohibiting discrimination against the handicapped. This is followed by a survey of judicial analysis of Section 504. The author concludes that the courts have not determined whether a duty exists to accommodate qualified handicapped persons and have not even begun to define standards for implementing any such duty.

Major Findings/  
Conclusions: In view of this mandate and the purpose of the statute revealed by legislative analysis, the comment concludes that judicial precedent defining other types of discrimination provides inadequate guidance for implementing Section 504. This article articulates an expanded view of the meaning of discrimination in the context of handicapped persons and proposes a standard for distinguishing between justifiable refusal to accommodate and discriminatory behavior. This standard requires accommodation directed toward ensuring that the handicapped only face burdens in receiving the benefits of federally funded programs equal to those burdens confronted by the non-handicapped. The equal burdens principle advances the statutory purpose of guaranteeing the handicapped full participation in federal programs.

Keywords: Anti-Discrimination; Reasonable Accommodation; Equal Burdens Principle

Key Issue: TREATMENT OF THE HANDICAPPED BY STATE LAW

Title: "Employee Dismissals"

Source: Business Insurance, Vol. 16, No. 41, October 11, 1982:  
72

Accession: Library of Congress

Overview: This article summarizes new rules governing employment of the handicapped in the state of Illinois.

Major Findings/  
Conclusions: The new state rules limit the information an employer may demand of an applicant but permit pre-employment physical or psychological exams and state that obesity, alcoholism, and drug abuse are not handicaps and may be grounds for dismissal if the condition interferes with job performance.

Keywords: Discrimination; State Law

Key Issue: TREATMENT OF THE HANDICAPPED BY STATE LAW

Title: "State Labor Legislation Enacted in 1981"

Principal Author: R. R. Nelson

Source: Monthly Labor Review, March 1985

Accession: Howard County Public Library

Overview: A summary, by state, of labor legislation is presented in each monthly issue.

Major Findings/  
Conclusions: Recently passed state labor law shows new interest in the problem of plant closings and layoffs, in addition to traditional subjects. Minimum wage rates were increased in 26 jurisdictions. Many bills were introduced to repeal prevailing wage laws. There was increasing interest, too, in furthering equal opportunity for the handicapped and for the veteran. Forms of employment discrimination and equal rights showed emerging interest.

Keywords: State Law

